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SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-fourth session

SUMMARY RECORD OF THE 7th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 August 2002, at 10 a.m.

Chairperson: Mr. PINHEIRO

later: Mr. KARTASHKIN
(Vice-Chairperson)

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The meeting was called to order at 10.15 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 2) (continued)

Statement in exercise of the right of reply

1. Ms. HOUMMANE (Observer for Morocco) said that a non-governmental organization (NGO) had allowed itself to be used as a front by opponents of Morocco's territorial integrity, whose totally inappropriate, not to say mistaken, comments on the human rights situation in that country were based on groundless allegations.

2. The release of 101 Moroccan prisoners in July 2002 could not be considered as evidence of a political will for peace, as the NGO concerned had insisted on interpreting it. On the contrary, it was required by international law and the relevant Security Council resolutions. It should not be forgotten that 1,260 Moroccan prisoners were still being held captive in Frente POLISARIO jails, where they had been kept for over 25 years in flagrant violation of international humanitarian law. Despite constant appeals by the Secretary-General of the United Nations and by the Security Council, including in its resolution 1429 (2002) of 30 July 2002, the Frente POLISARIO still refused to accept its historical responsibility to free the Moroccan prisoners.

3. She also drew attention to the ordeal of the Moroccans held in the camps in Tindouf, whose situation was intolerable. Subjected not only to exile and harsh living conditions but also to the worst kinds of human rights violations, they were deprived of the most basic rights, such as freedom of expression and the right to information. Attention was regularly drawn to those human rights violations by the international press and by some NGOs in the field. For example, in its 2002 report, Amnesty International pointed out that the perpetrators of the human rights violations in those camps still enjoyed impunity.

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (agenda item 3) (continued) (E/CN.4/Sub.2/2002/4-6; E/CN.4/Sub.2/2002/NGO/4, 14-16, 20 and 22)

4. Ms. HAMPSON, introducing the work in progress that she had submitted in accordance with Sub-Commission resolution 2001/105 (E/CN.4/Sub.2/2002/6), concerning the scope of the activities and the accountability of armed forces, United Nations civilian police, international civil servants and experts taking part in peace support operations, sought the views of Sub-Commission members on three specific points. It was her intention to cover all operations carried out under United Nations mandates by either United Nations forces or other forces, and she would like first of all to know whether the Sub-Commission approved of that approach, which excluded operations not carried out under the authority of the United Nations.

5. Suggesting that a distinction should be drawn between the acts of individuals and/or contingents which were in conflict with human rights standards and the implementation of specific human rights mandates, she asked if the implementation of those mandates should be considered in the study.

6. The problem of prostitution and trafficking in women in the context of peacekeeping operations should also be tackled. When someone participating in such an operation had sexual relations with a prostitute in full knowledge that she was not acting voluntarily, it could be argued that the client and the client's contingent was accountable insofar as the individual concerned was exploiting a situation that involved a human rights violation, even if the individual was not responsible for that situation. That raised the broader question of the responsibility of contingents towards the persons under their control: to what extent were they responsible for preventing serious violations from being committed by third parties, particularly in the case of prostitution and trafficking in women? She would like to know if members of the Sub-Commission thought it necessary to include that issue in the planned study.

7. Mr. SATTAR asked whether the proposed study would deal solely with operations carried out in implementation of a human rights mandate or whether it also concerned peacekeeping operations.

8. Ms. HAMPSON said that her working paper would seek to cover all forms of peacemaking operations, including peacekeeping or peace enforcement operations, carried out under a United Nations mandate.

9. Mr. KARTASHKIN said that it would be necessary to define precisely the legal framework and norms applicable for any operation carried out under a United Nations mandate, whatever its nature. It would also be necessary, as Ms. Hampson had pointed out, to define responsibilities clearly, by making a distinction between those of individuals and those of the contingents to which they belonged.

10. In the case of human rights violations such as forced prostitution or trafficking in women, the contingent should bear overall responsibility; in other words, it should be responsible not only for acts committed by individuals taking part in the operations but also those committed by third parties. The degree of responsibility would nevertheless depend on whether the violations were committed by members of the contingent or by third parties. In any case, personnel acting under the authority of the United Nations should ensure that no violation of any kind was committed by anyone.

11. Mr. PARK welcomed the work done by Ms. Hampson on the accountability of participants in peace support operations, which should fill a number of gaps, as the rules in that area were still very vague. Unfortunately, there had been many cases of human rights violations being committed during such operations, as pointed out, for example, in the 2001 report of the Office of Internal Oversight Services. Several country-specific studies on the sexual exploitation of children during armed conflicts had shown that the arrival of contingents to take part in operations of that kind had been followed by a rapid increase in child prostitution. An assessment mission carried out by the Office of the United Nations High Commissioner for Refugees and Save the Children UK in Kenya, Liberia and Sierra Leone in October and

November 2001 had also observed that peacekeeping troops abused their position and authority. While not wishing to denigrate the work carried out during those operations, he stressed the need to define clearly the responsibility of those taking part in them for their acts, whether or not those acts were committed in the exercise of their official duties.

12. The planned study should cover all operations carried out under the authority of the United Nations or with its authorization, with the aim of identifying remedies for the victims of human rights violations committed by individuals or contingents taking part in those operations. It would also be desirable to examine the implementation of mandates related specifically to human rights. In the case of violations related to prostitution and trafficking in women, the concept of accountability should be broadened to include a duty of protection, including protection from violations that might be committed by third parties.

13. Another issue raised was that of the accountability of international organizations themselves. If individuals or contingents taking part in United Nations-mandated peacemaking operations committed human rights violations, who was to be held responsible at the criminal and civil level: the perpetrators of the violations, the States of which they were nationals, or the United Nations? Perhaps joint accountability was a possibility. That raised the question of what court was competent and what laws were applicable. No clear answers to that question could be found in existing texts, such as the Convention on the Privileges and Immunities of the United Nations, the General Assembly resolution of 1998 setting time limits and financial limits on requests for compensation arising from civil responsibility, or the Secretary-General's circular on compliance with international humanitarian law by United Nations forces. That was why it would be particularly useful to carry out studies on the subject in order to contribute to the development of new rules of international law relating to the activities of international organizations.

14. Pointing out that the title of the paper submitted by Ms. Hampson, as it stood, seemed to refer to armed forces in general, he suggested changing it to specify that the paper related to armed forces intervening under a United Nations mandate. He would also like the paper to draw a distinction between peacekeeping operations and peace enforcement measures. Finally, he approved of Ms. Hampson's idea to annex a set of "standard provisions" to every United Nations peacemaking mandate. He hoped that such a proposal would be included among her final recommendations.

15. Mr. EIDE said that he agreed with Ms. Hampson's view of the scope of the planned study but was not sure that he had properly understood the second point on which members of the Sub-Commission had been invited to give their views, and asked for clarification on that point.

16. The issue of prostitution and trafficking in women in the context of peacemaking operations - which were, in fact, but one example of the serious violations that could be committed during those operations - raised the question of the scope of United Nations mandates. In that respect, a distinction should be made between the obligation to comply with human rights standards, which applied to every individual taking part in the operations, whatever the circumstances, and the obligation to protect people, which varied according to the nature of the mandate and individuals' ability to act under that mandate.

17. He wondered about the practical consequences of accepting that the United Nations itself bore some responsibility. Would the United Nations be held responsible for controlling the behaviour of individuals taking part in operations, dismissing the perpetrators of violations or those who had been unable to prevent violations being committed by third parties, or compensating victims?

18. Another question to be studied more closely was that of jurisdiction, since proceedings currently had to be conducted in domestic courts. In that respect, it would be interesting to examine the role of the International Criminal Court and to study the implications of the refusal by the United States of America to recognize the Court's jurisdiction over its nationals. That desire for impunity showed clearly that the possibility of war crimes or crimes against humanity committed within the framework of operations carried out under the authority, or with the authorization, of the United Nations had to be foreseen.

19. Ms. MOTOC welcomed Ms. Zerrougui's working paper (E/CN.4/Sub.2/2002/5) and said that the danger in studying a question as vast as discrimination in the criminal justice system was that in-depth analysis was impossible. The decision to focus on the legal aspects of domestic legislation and inter-State agreements, including regional ones, therefore appeared to be a particularly judicious one. A distinction must be drawn between regional agreements that affected third States and those that, like certain Council of Europe agreements, were purely regional.

20. With regard to Ms. Hampson's study, the approach to be taken would depend on whether it was the accountability of the United Nations or that of States that was being considered. In the first case, it would be very much a standard-setting exercise, undertaken with a view to proposing guidelines. In the second, it would be a question of examining the effectiveness of the law by reviewing ways to punish the perpetrators of violations, taking into account the unreliability of the judicial bodies in the countries affected by armed conflicts where the violations were committed.

21. It seemed appropriate to draw a parallel between peacekeeping forces and peace enforcement forces authorized by the Security Council: they pursued the same aims under the Charter and were thus also the responsibility of the United Nations. Some operations were, moreover, on the borderline between traditional peacekeeping and peace enforcement, because of the very ambiguous references to self-defence in Security Council resolutions.

22. Ms. Hampson's reasons for studying mandates related specifically to human rights separately were not very clear. She wondered if it was because there was a possible conflict between that kind of mandate and the existing legislative framework in the field of human rights, which might lead to certain violations.

23. Violations related to prostitution and trafficking in women were, of course, only one example of the many violations that might be committed during peace support operations. The question of the seriousness of the violations thus arose. Although there were criminal courts for crimes against humanity and war crimes, the legal framework for other violations was much more vague.

24. Mr. YOKOTA agreed with Mr. Park that Ms. Hampson's final study would need to have a fairly broad scope to cover all personnel engaged in peacekeeping operations pursuant to Article 42 of the Charter of the United Nations and in operations carried out by multinational forces acting under a Security Council mandate in accordance with Article 53 of the Charter. In that respect, it would be necessary to consider the question of the application of human rights standards in the case of the strikes by the North Atlantic Treaty Organization (NATO) on Yugoslavia in connection with events in Kosovo, given that top NATO officials and the President of the United States of America, Mr. Bush, had tried to justify that very controversial military action by arguing that it was provided for in the Charter.

25. With regard to the second point raised by Ms. Hampson, he was unsure, like Mr. Eide, of quite what the question meant. In any case, the final study should cover all the activities involved in a peacekeeping operation.

26. With regard to the law applicable to trafficking in women, priority should be given to humanitarian law, since if a State had not ratified the human rights instruments, particularly the conventions dealing with women's rights, it could not be claimed that nationals of the State concerned were bound by those instruments. On the other hand, as the Geneva Conventions had become part of customary law, there was absolutely no doubt that all members of peacekeeping forces must abide by them, whether or not the States of which they were nationals had ratified the human rights instruments.

27. Finally, he wondered what mechanisms would be used to bring the perpetrators of violations to justice. Would the United Nations be responsible for extraditing members of peacekeeping forces for trial by the International Criminal Court? The Sub-Commission should take a position on the refusal by the United States of America to recognize the Court's jurisdiction over United States nationals taking part in peacekeeping operations.

28. Ms. KOUFA said that she would like Ms. Hampson to expand on her introduction and offer some tentative conclusions, so that members could contribute more effectively to her study.

29. Ms. WARZAZI said that it was necessary to prosecute and punish not only the perpetrators of violations but also their superiors when the latter knew what was happening but did not intervene. Moreover, it would be useful if the United Nations could obtain from the Governments supplying contingents a commitment to have their nationals tried by their own courts. If they refused to do so, the United Nations could refer the cases to the competent international bodies.

30. Mr. WEISSBRODT drew Ms. Hampson's attention to chapter XXII of the training manual prepared and published by the Office of the United Nations High Commissioner for Human Rights, entitled "Norms applicable to UN human rights officers and other staff", which listed the rules applicable to international civil servants and other United Nations staff members whose function was to monitor human rights, and also to the 1994 Convention on the Safety of United Nations and Associated Personnel.

31. Ms. HAMPSON, replying to questions on the second point in her introduction, said that peacekeeping missions could include a number of components, including human rights training. As violations committed within the framework of that specific kind of activity were extremely rare, she had excluded that scenario from the scope of her study. On the other hand, she proposed to study the accountability of international civil servants whose conduct was incompatible with human rights standards.

32. With regard to trafficking in women, the accountability of soldiers who used the services of prostitutes was indirect and consequently not as clear-cut as in cases where soldiers ill-treated prisoners in their custody. Nevertheless, prostitution raised the broader issue of the extent to which peacekeeping troops had responsibility to protect women against third parties who violated their rights.

33. Explaining her choice of the term "accountability" in the English title of her document, she said that the word had a very broad meaning that covered legal responsibility, dispute settlement through administrative channels and the possible use of follow-up mechanisms to monitor domestic proceedings when the perpetrator of a violation was tried in the State of which he or she was a national. Moreover, the decision to make no direct reference to the Blue Helmets in the title, but to use a broader term, arose from a desire to include multinational armed forces acting under a United Nations mandate.

34. She intended to study the question of accountability from the viewpoint of civil, criminal and administrative regulations and to follow Mr. Park's suggestion to prepare a set of guidelines and practical recommendations rather than binding rules. The Sub-Commission could take up that constructive idea in other situations too.

35. Mr. LEBLANC (Dominicans for Justice and Peace), speaking also on behalf of Franciscans International, Pax Christi International and North American Dominican Justice and Peace Promoters, said that several Dominican congregations in the United States had been campaigning for the abolition of the death penalty. Since 1987, the Commission on Human Rights had adopted several resolutions in which it had requested States to introduce a moratorium on executions and 109 of the 189 States Members of the United Nations had begun to put those resolutions into practice, as shown by encouraging developments in Kyrgyzstan, Guatemala, Turkey and the United States.

36. In Kyrgyzstan, President Akayev had extended the moratorium on the death penalty and announced the adoption of a human rights programme that should lead to its abolition by 2010. In Guatemala, President Portillo had announced in July 2002 that 36 executions had been suspended and the Government had submitted a bill to abolish the death penalty, on which Congress would be taking a decision in the very near future. In Turkey, Parliament had voted for the abolition of the death penalty in peacetime on 2 August 2002, bringing the country significantly closer to membership of the European Union.

37. In the United States, the Supreme Court had recently handed down some crucial decisions, particularly one concerning a mentally handicapped person, in which it had declared

the death penalty to be unconstitutional. Consequently, the 20 States in the United States where the mentally handicapped could still be sentenced to death had been forced to suspend executions of that category of offender.

38. Persons belonging to racial minorities or disadvantaged and marginalized groups were particularly affected by discrimination in the criminal justice system, as shown by the abnormally high rate of death sentences passed on members of those groups. In that connection, he cited the case of Javier Suárez Medina, a young Mexican who had been sentenced to death at the age of 19, following a trial that left many questions unanswered, and who was due to be executed on 14 August 2002 in Texas, after spending 13 years on death row. As far as the supposedly deterrent effect of the death penalty was concerned, both independent studies and a United Nations study showed that the crime rate was not affected by the existence of that punishment.

39. In the belief that capital punishment merely perpetuated the cycle of violence, he urged all Governments to abolish the death penalty, ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and provide more humane alternative sentences. He encouraged the Sub-Commission to undertake a comprehensive study on discrimination in the criminal justice system and to support the appeal by the Pope and United States bishops for a moratorium on executions, and recommended that the Sub-Commission should look into the case of Javier Suárez Medina and intervene to prevent his imminent execution.

40. Mr. GUISSÉ, referring to Ms. Zerrougui's working paper, said it was unfortunate that the justice system, the last line of defence of any individual, should have ceased to contribute, through the principle of equality before the law, to the building of democratic societies around the world. The right to fairness in judicial matters was not limited to the trial as such. It should also be respected during the preliminary investigation carried out by the police, as it was mostly in police stations that individuals who had been deprived of their liberty were the victims of serious violations. Individuals detained in the offices of the border police or taken to the border were often ill-treated, tortured and deprived of any national or international legal protection. Police custody needed to be regulated, particularly in the developing countries. Provision must be made for the presence of a lawyer and for habeas corpus or amparo procedures, and the prisoner must have an opportunity to be examined by a doctor at the end of the preliminary investigation.

41. Inequality in the sphere of justice was also evident in trials, where the cost of proceedings, including civil proceedings, meant that justice was for the rich only. Indigenous peoples could not afford to challenge the expropriation measures regularly used to steal their land from them. Trade and employment tribunals in the developing countries were so corrupt that they spent their time declaring bankruptcies or announcing lay-offs for the benefit of transnational corporations, providing proof, if proof was needed, of the damaging role played by those corporations in developing countries, which no longer had any control over their economies or courts. A true justice system applied the same law to all people and all institutions, but current developments showed such justice was unfortunately still a long way off.

42. Mr. Kartashkin, Vice-Chairperson, took the Chair.

43. Mr. MADELIN (International Federation of Human Rights Leagues) drew the Sub-Commission's attention to the fate of Mr. Hamma Hammami, spokesperson of the Tunisian Communist Workers' Party, who had been imprisoned on 2 February 2002 after a mockery of a trial. Mr. Hammami had been ill-treated and kept in solitary confinement. His wife, Ms. Nasraoui, had condemned the sentencing of her husband for a "crime of opinion" and had gone on a hunger strike lasting almost five weeks. Their family had been constantly harassed by the Tunisian authorities for several years.

44. He welcomed the major advance for humanity represented by the establishment of the International Criminal Court and stressed that if the Court was to be, and be seen to be, a just, effective and independent institution, its judges must be extremely competent and impartial. The procedure for appointing judges must therefore be completely transparent and impartial and should involve consultation with civil society. Observing that the process as it stood had produced one particularly politicized appointment, from both a national and an international viewpoint, he welcomed the appeal for transparency and impartiality made on 28 June 2002 by the Special Rapporteur on the independence of judges and lawyers and called on the Sub-Commission to adopt a resolution on the question. Finally, he called on the Sub-Commission to express concern at the introduction in the United States and elsewhere, under cover of the fight against terrorism, of emergency, arbitrary and discriminatory forms of justice.

45. Ms. BELLAMY (International Confederation of Free Trade Unions) said it was deplorable that trade unionists going about their legitimate business were often treated with hostility by the authorities, who threatened their lives, personal safety and liberty. She called, in particular, for the immediate release of six trade unionists detained illegally in Haiti since 27 May 2002 for demonstrating during a conflict that had degenerated into clashes in which two trade unionists had been killed and many others injured as a result of lax policing by a complicit police force.

46. She condemned the sentencing of 10 trade unionists in the Democratic Republic of the Congo to 10 months' imprisonment for calling for a strike in the course of their legitimate trade-union activities and demanded their release and reinstatement. The Brazilian Government must take all necessary steps to prosecute and punish those guilty of killing and torturing a trade unionist, Bartolomeu Morais da Silva, who had been gathering evidence about abuses committed by certain parties in a government department in Pará. She also condemned the "regularization" of the trade-union movement by the Government in Belarus and the clampdown on independent trade unionists in China and Korea, and also in Turkey following the introduction there of a new labour code.

47. Ms. KOUFA joined her colleagues in encouraging Ms. Zerrougui to undertake an in-depth study on discrimination in the criminal justice system. The study should focus on criminal procedure and on the organization and functioning of the police and judicial and prison staff, and should, as Ms. Zerrougui had rightly emphasized, avoid peripheral forms of discrimination that were not directly attributable to the administration of justice. She should therefore take the administration of justice as her starting point before moving on to other factors

that contributed to the persistence of discrimination in the criminal system. Such a study would be a useful contribution by the Sub-Commission to the implementation of the Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and to the work of the Commission on Crime Prevention and Criminal Justice.

48. Mr. SHARAFEDDIN (International Organization for the Elimination of All Forms of Racial Discrimination) said that there was no peace without justice and that conflicts were a natural phenomenon that had always existed. With time, human beings had managed to find ways to overcome their natural instincts by using their intelligence, wisdom and experience. The logic of domination and force had never achieved lasting peace and security, and States had established judicial systems to settle disputes between their citizens. He wondered, therefore, why it had not been possible to establish an international court to settle conflicts between different groups and different States. That task needed to be tackled urgently before a nuclear tragedy put an end to life on Earth.

49. Neither the International Court of Justice nor the new International Criminal Court had yet been able to accomplish that task. The latter's role had been compromised by the United States' insistence that its soldiers should be exempt from its jurisdiction. The former had only limited powers, partly because it could not intervene in any international conflict, however dangerous it might be, without the agreement of the two parties to the conflict and partly because it was unable to enforce its decisions through the use of international armed forces or other means of pressure. The Sub-Commission should raise that problem, which must be addressed if there was ever to be a strong and effective international court fully capable of upholding the rules of justice and applying them widely to groups and nations and thus ensuring peace.

50. Mr. ALFONSO MARTÍNEZ welcomed Ms. Zerrougui's well-argued final working paper on the administration of justice (E/CN.4/Sub.2/2002/5). As she suggested in paragraph 8 of the paper, there was a need to study further the daily workings of criminal justice and to examine carefully the mechanisms which, in violation not only of international but also of national rules, tended to perpetuate discrimination in criminal justice systems. In that respect, it was important that the study should concentrate on institutional mechanisms as well as on the particular social conditions in each country.

51. In her study, Ms. Zerrougui discussed the impact both of the World Conference against Racism and of the tragedy of 11 September 2001. The Declaration and Programme of Action of the World Conference had confirmed the existence of discrimination in the administration of criminal justice. As for the attacks of 11 September, which had been unanimously condemned by the international community, although Ms. Zerrougui had no mandate to evaluate the compliance or non-compliance of anti-terrorist provisions with international human rights standards and humanitarian law, as pointed out in paragraph 19, she should certainly study certain discriminatory measures in the area of criminal justice which had been taken as part of the fight against terrorism and which breached not only international standards but also domestic laws. Such measures had already been condemned by the United Nations High Commissioner for Human Rights, various NGOs and United Nations organs.

52. Ms. Zerrougui had analysed the characteristics and causes of discrimination affecting both nationals and aliens, while pointing out, in paragraph 28 and the following paragraphs, that non-citizens, and particularly women in that group, were the main victims of such discrimination. With regard to the failure of national criminal justice systems to meet the needs of vulnerable populations, it should be stressed that the socio-economic situation was responsible for the limited access by certain marginalized population groups to criminal justice.

53. In conclusion, he would support a recommendation by the Sub-Commission to the Commission on Human Rights that the study should be pursued in greater depth.

54. The CHAIRPERSON informed the Sub-Commission that the International Commission of Jurists, which had intended to make a statement on the administration of justice by military courts, had agreed to postpone its intervention as Mr. Joinet had not yet introduced his report on that subject.

55. Mr. SHIMABUKURO (International Association of Democratic Lawyers) said that his association had been drawing attention for many years to the campaign led by the League Demanding State Compensation for the Victims of the Public Order Maintenance Law. That repressive law had been introduced in Japan in 1925 to clamp down on anyone advocating freedom and democracy. Hundreds of thousands of people had suffered in the clampdown; 2,000 people had been tortured to death or had died in prison. The President of the League had himself been arrested, imprisoned and tortured for his opposition.

56. Everyone knew that during the 15 years of the war of aggression it had waged in the Asian and Pacific region up to 1945, Japan had committed all kinds of atrocities against the peoples of the region. The Nanjing massacre, experiments on living beings and the "comfort women" scandal were but a few examples. The war had caused 20 million deaths in the region and over 3 million in Japan itself. Since its foundation in 1968, the League had been trying to convince the Japanese Government to accept its responsibilities, calling on it to recognize and compensate the victims. However, the Japanese authorities still refused to do so, on the pretext that the matter had been dealt with. The Japan Federation of Bar Associations, which had over 15,000 members, had already adopted a resolution in 1993 calling on the Japanese Government to give priority to compensating the victims of the Public Order Maintenance Law.

57. The payment of compensation for wartime suffering was a trend that could be observed all round the world. Japan's attitude in that respect differed markedly from that of many countries, such as the Republic of Korea, which had recognized the mental and financial harm caused to victims under Japanese colonial domination by the repressive Japanese law. In Germany and Italy, compensation had been paid to war victims and resistance fighters who had fought against fascism during the Second World War. The French, United States and Canadian Governments had also taken similar steps.

58. The Japanese Government's refusal to do likewise, while in fact attempting to justify and minimize the war of aggression and the war crimes it had committed, was unacceptable. Having become a major military power, Japan was currently using the terrorist attacks on the United States as a pretext for passing new emergency legislation, such as that concerning national conscription, with the sole aim of building up its military strength and taking part in military operations abroad alongside the United States.

59. He therefore called on the Sub-Commission to take the following measures: to recommend that the Japanese Government should seriously study the question of war reparations; to appoint, as necessary, a special rapporteur to study the question further; to recommend that the Japanese Government should set up a group consisting of members of the League Demanding State Compensation for the Victims of the Public Order Maintenance Law and representatives of the Government; and, lastly, to recommend that the Japanese Government should ratify the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

60. Mr. ALI (Movement against Racism and for Friendship among Peoples) said that justice was generally more or less well administered but there were cases where it was not administered at all. One such case related to his own country, Mauritania. A number of flagrant violations continued to take place in Mauritania with complete impunity. In that country, which formed a bridge between northern Africa and black Africa and in which the population consisted of Berber Arabs and black African peoples, the Berber-Arabic community, which held power, imposed on black Mauritanians a systematic policy of racial discrimination and segregation in all spheres of political, economic, social and cultural life.

61. In 1986, thousands of black Mauritanian professionals had been arrested and given heavy sentences, with no lawyers present. A prison sentence of four to five years with hard labour was the usual punishment for those who condemned institutionalized racism in Mauritania. In December 1987, three black officers accused of treasonable conspiracy had been hung and shot after a summary trial. In 1989, ethnic cleansing had led to the mass deportation of almost 120,000 black Mauritanians to Senegal and Mali, and the villages where those people lived had been systematically repopulated with a Moorish population. Those deportees were in fact the survivors of a genocide organized and orchestrated by those in power.

62. Since then, the south of the country, where the black Mauritanians lived, had been under a state of emergency and under the control of an army "purged" of blacks. Between November 1990 and March 1991, over 500 black Mauritanian soldiers had been killed, burned, buried alive, drawn and quartered or shot. In June 1993, to guarantee impunity for the persons responsible for those crimes, the Mauritanian Government had proclaimed an amnesty for all crimes committed by the armed forces and security services between 1989 and 1992. However, Mauritanian communities continued to suffer from racial segregation and they were still being gradually excluded from all economic activities, laid off, robbed of their land so that it could be redistributed, denied official papers and subjected to systematic identity checks inside the country.

63. Around 150 years after the abolition of slavery, over 70 per cent of the Mauritanian population suffered human rights violations comparable to crimes against humanity. It was in that context that his association supported the organization Aide aux veuves et orphelins de militaires mauritaniens (AVOMM), which provided assistance for widows and orphans of Mauritanian soldiers, in its court action against the perpetrators of those crimes. That organization welcomed the recent decision by the Nîmes pre-trial chamber to have charges brought before the Gard assize court against a Mauritanian officer for crimes of torture and barbarism committed on black Mauritanian citizens in Mauritania.

64. He therefore called on the Sub-Commission to pay particular attention to the administration of justice in Mauritania. He would shortly be submitting a complete report so that the Commission on Human Rights could take up the question at its next session.

65. Ms. BONAVITA (Indian Movement "Tupaj Amaru") said that she was also speaking on behalf of an association called "¿Dónde Están?", which was campaigning for information to be provided on the fate of those people who had disappeared in Latin American countries, including Uruguay, during the years of military dictatorships.

66. A so-called "Peace Commission" had been set up in Uruguay by a presidential decision to determine the fate of 168 Uruguayan citizens who had disappeared before and during the military dictatorship. Unfortunately, the Commission, which had been called upon to establish the historical facts and to restore the collective memory of the people, had been a disappointment. The Peace Commission - which had no coercive powers, was formally bound not to identify anyone who might have been responsible for the disappearances and was prevented from taking any judicial action whatsoever against the guilty parties - had announced that it had thus far solved 15 cases of disappearances, but without recovering the remains of any of those missing. The commanders-in-chief of the armed forces, with the support of the President and Minister of Defence, had actually refused to provide any specific information, even though they were guaranteed impunity. The Government's position in the matter was completely contradictory, since although having set up the Commission it was also supporting those who hindered its work. In fact, the Uruguayan Government had never stopped supporting the soldiers and police officers who had violated human rights during the dictatorship, as shown by its refusal to supply information to Argentine judges prosecuting Uruguayan soldiers responsible for crimes committed in Argentina during "Operation Condor".

67. There were currently three complaints pending before the criminal courts. One concerned the disappearance of a teacher, Elena Quinteros, in June 1976. Proceedings in that case had been delayed for over 10 years because of "lost documents". A second complaint concerned 12 forcible disappearances in 1976 in Argentina. For the first time, a judge had recognized that forcible disappearance was a continuing offence and, as such, not subject to statutory limitations. Judges would therefore have to reopen the cases. The third complaint concerned the disappearance and killing of the daughter-in-law of Argentine poet Juan Gelman.

She had been secretly taken from Buenos Aires to Montevideo at the age of 19, when already eight months pregnant. After giving birth in the military hospital, the young woman had been killed and her daughter handed over to a high-ranking police official.

68. Meanwhile, the Uruguayan Government, acting under orders from Washington, had submitted a resolution against Cuba, at the fifty-eighth session of the Commission on Human Rights, to justify the economic embargo on that country. Once again, the Uruguayan people's profound friendship for the Cuban people had been betrayed. If the same political will had been applied to clearing up the kidnappings of children, murders and other crimes committed before and during the dictatorships in the countries of the Southern Cone, impunity would not be so widespread in those countries.

The meeting rose at 12.55 p.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-fourth session

SUMMARY RECORD OF THE 8th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 5 August 2002, at 3 p.m.

Chairperson: Mr. PINHEIRO

later: Mr. YOKOTA
(Vice-Chairperson)

later: Mr. PINHEIRO
(Chairperson)

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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (continued)

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The meeting was called to order at 3.15 p.m.

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (agenda item 3) (continued) (E/CN.4/Sub.2/2002/4, 5 and 6; E/CN.4/Sub.2/2002/NGO/4, 14, 15, 16, 20 and 22)

1. Mr. JOINET, Special Rapporteur on the administration of justice through military tribunals, introducing his report (E/CN.4/Sub.2/2002/4), said that two of his most important reference standards had been Commission on Human Rights resolution 2002/37, on integrity of the judicial system (para. 10), and Human Rights Committee General Comment No. 13, on article 14 of the International Covenant on Civil and Political Rights (para. 12).

2. Paragraph 8 of Commission resolution 2002/37 represented an attempt to improve judicial guarantees in military tribunals and, in the long term, to encourage the abolition of such tribunals, and had inspired a number of his recommendations. The General Comment was of particular interest because of the contribution it had made to Human Rights Committee case law over the years as the Committee had addressed the changing role of military tribunals during its consideration of States parties' reports. The trend in recent decades had been from the use of military courts to try solely military offences in time of conventional warfare, through their use to try armed civilians engaged in national liberation movements during colonial wars, to their increasing and continuing use in trying civilians exercising their democratic civil right to oppose Governments. In certain countries, however, there was an equally clear trend towards the "demilitarization" of military tribunals, whether in terms of their jurisdiction or in terms of their composition.

3. Building on the work of his predecessors (para. 1), he said that, if military courts could not be abolished, it was important at least to reinforce the judicial guarantees applicable therein. Summarizing his recommendations (paras. 29-38), he drew particular attention to the issue of secrecy (recommendation No. 2).

4. Secrecy surrounding the deprivation of liberty was a major factor in serious human rights violations, as had been seen at the time of the dictatorships in Chile and Argentina, for example. It was vital that the recourse of habeas corpus should remain inviolable: it was during the first hours of detention that human rights violations tended to occur. The continuing importance of that issue had been highlighted by the recent court decision ordering the United States Government to publish the names of prisoners captured in connection with the 11 September 2001 terrorist attacks and its own action in Afghanistan some months later. The decision included a discussion of the problem of combating terrorism in a democratic context and was well worth reading.

5. His recommendations would need refining if the Sub-Commission wished to attempt to derive principles from them. The next stage of work should, perhaps, concern the subject of courts of special jurisdiction in general: even if a country abolished military tribunals, civil courts of special jurisdiction could still be established, and their use needed to be examined.

6. Ms. ZERROUGUI said that the issues of the administration of justice through military tribunals and the scope of the activities and the accountability of those involved in peace support operations had acquired a relevance none could have foreseen when the Sub-Commission had placed them on its agenda in 2000, at the suggestion of Mr. Joinet and Ms. Hampson.

7. At a time when the impartiality and independence of such tribunals was increasingly being called into question, the restrictions on their jurisdiction recently introduced in Turkey and Bahrain were particularly welcome.

8. In the wake of the events of 11 September 2001, there was a real danger not only that military tribunals would be maintained in many countries but also that their jurisdiction over civilians and over members of the military involved in serious human rights violations would be reinforced, and that even more restrictions on judicial guarantees before such courts would be introduced.

9. The United States, for example, had recently established military tribunals that flouted the most elementary principles of due process and the United Nations Security Council had placed some limitations on the jurisdiction of the International Criminal Court with respect to peacekeeping troops.

10. If countries that, in the past, had advocated the abolition of military tribunals and tribunals of special jurisdiction were switching positions, she wondered who would be left to speak out on the issue: the Working Group on Arbitrary Detention constantly received communications challenging military and special jurisdiction tribunals, particularly in countries of the South, and also in Israel, where military jurisdiction extended to all Palestinians, including children.

11. Even Commission on Human Rights resolution 2002/37, which was of particular importance in that context, had not been adopted by consensus, Canada and the United Kingdom having requested a vote and the Western Group having abstained almost en bloc - a somewhat puzzling position considering that some of those countries had no military tribunals at all and others had abolished them in peacetime.

12. She hoped that the situation would prove a temporary setback only and proposed that the Sub-Commission should adopt a resolution endorsing the principles outlined by Mr. Joinet as binding minimum rules to protect the human rights of those brought before military tribunals and tribunals of special jurisdiction, and that it should ask the Commission on Human Rights to adopt a similar decision.

13. Mr. GUISSÉ said he wondered what would happen in countries where it was becoming more common to extend military jurisdiction to civilians and civil offences and where, in general, no defence was permitted. Such extension in the countries of southern Africa was of great concern since it frequently led to summary executions and the denial of justice. Lawyers in military tribunals who did not know the procedures and techniques of defence offered no guarantee of a fair trial. One development seen in the countries of northern Africa had been the intervention of civil judges in criminal procedures and he wondered whether that could be extended to the south also. In French-speaking countries, military tribunals were often presided

over by civil judges but usually for petty offences only. He believed it was necessary therefore to define military offences so as to limit the jurisdiction of the military courts. Guidelines were required on the principle of jurisdiction for military courts as a first step towards their limitation.

14. Ms. HAMPSON said she was pleased to note that Turkey had abolished the death penalty in peacetime and she also welcomed the decision by a Federal Court in the United States of America to require that the names of detainees in the Guantánamo base be released. She also hoped that Mr. Joinet's report would eventually result in a code of principles.

15. With regard to courts martial in peacetime, she believed that they should not be abolished unless certain guarantees could be given. For example, if a peacekeeper were to commit a criminal offence under the law of his own and another country, the current situation was that only the courts of his own country would have jurisdiction. However, if on the basis of the evidence gathered from all witnesses in the territory where the crime was committed, it was felt that it would be preferable to hold the trial on that territory, that was quite acceptable provided that due process was respected. There were, nevertheless, many conditions attached, such as the fact that courts martial should apply only to members of the armed forces in question. Military tribunals should have no jurisdiction over civilians or children under the age of 18, even if they were serving in the armed forces.

16. She recommended a more cautious approach, however, to the remedy of habeas corpus which, at least in the United Kingdom, was not in practice the wonderful remedy it appeared to be in theory.

17. One issue not addressed in the report and one that could be introduced as a recommendation concerned the composition of a court martial. It was important to ensure that there was no hierarchical relationship between the defence lawyer, the suspect and the judges. With regard to recommendations Nos. 2 and 3, she believed that military secrecy, like decisions to hear a case in camera, should be subject to some form of review. One way to ensure due process for soldiers was to ensure they had access to a lawyer of their own choosing, as they would in civilian courts.

18. Any future study should also consider situations in which a military judge sat alongside civilian judges, as had once been the case in State security courts in Turkey, bearing in mind that the European Court of Human Rights had ruled that the very presence of a military judge in trials of civilians meant there was a risk of an unfair trial.

19. She hoped that the study would lead to the production of guidelines to assist the Commission on Human Rights in its work and help States in the process of reviewing their systems of military justice. Courts martial might be necessary in certain circumstances, but they must be fair and consistent with due process.

20. Mr. SORABJEE said that Mr. Joinet's excellent report was a very timely one, given that a development that would have been unthinkable a year previously - the emergence of military tribunals in democratic countries - was gaining acceptance, even among some civil libertarians.

As the report made clear, military tribunals violated several of the guarantees incorporated in article 14 of the International Covenant on Civil and Political Rights, in that there was no public hearing and the independence and impartiality of the tribunal was not guaranteed.

21. While there might be strong arguments to retain military tribunals in the case of military personnel accused of so-called "military offences", which needed to be defined, the crucial point was that military courts must be open to judicial review. In his view, therefore, recommendation No. 6 was non-negotiable: the legality of the proceedings in military tribunals must be judged by civilian courts and remedies such as habeas corpus - which in India was an extremely effective remedy - must be available to defendants.

22. Mr. DECAUX said he welcomed Mr. Joinet's imaginative and practical proposals for the "demilitarization" of justice. A specialized justice system was by definition discriminatory and he doubted whether the defendant could really receive a fair hearing by an independent and impartial tribunal, as required by article 14 of the International Covenant on Civil and Political Rights, in the case of military trials of civilians or where disputes between civilians and the military were resolved by military courts. In that regard, General Comment No. 13 of the Human Rights Committee was of the utmost importance.

23. The anti-terrorist measures introduced in various parts of the world since 11 September 2001 and, more generally, the abuse of states of emergency presented a real risk of backsliding in the area of judicial guarantees. That issue needed to be looked at more closely, as did the application of international criminal justice to peacekeeping operations and the responsibilities of military and civilian personnel working in such operations.

24. Mr. POLIFRONTI (International Commission of Jurists) said that military tribunals were all too often a source of injustice and impunity and the trial of civilians by military tribunals was frequently incompatible with international law. He thus agreed with the conclusion of the Special Rapporteur on the independence of judges and lawyers that international law was developing a consensus as to the need to restrict drastically, or even prohibit, the use of such courts (E/CN.4/1998/39/Add.1, para. 78). Both the Inter-American Court of Human Rights and the European Court of Human Rights had reached the conclusion that the individual's right to due process was violated when a military court assumed jurisdiction over civilian matters. Moreover, serious human rights violations such as extrajudicial executions or torture committed by the military or the police could not be considered as military crimes and should be tried under ordinary law. Several United Nations treaty bodies and mechanisms, as well as the Inter-American Commission on Human Rights, considered the trial of soldiers or police officers by military courts for human rights violations to be incompatible with international human rights law.

25. Pseudo-judicial bodies set up during states of emergency were, in fact, organs of the executive branch of Government and, as such, violated the basic principles of the independence of the judiciary. Even in the most extreme circumstances, where trial by civilian courts was physically impossible, the trial must respect the minimum guarantees established by international law.

26. The rights of military personnel and police officers tried by military courts for military offences were frequently violated. For example, the right to a fair trial was far from guaranteed when the military courts were composed of military officers subjec o the discipline of the military hierarchy. Moreover, military criminal law in many States allowed military courts to exercise extraterritorial jurisdiction and to try military or police officers from their country for crimes committed while participating in United Nations or other intergovernmental peace operations. Most such cases were tried by military courts, with the notable exception of the case concerning Canadian troops in Somalia, which had eventually been handed over to the civilian courts.

27. He urged the Special Rapporteur on the administration of justice through military tribunals to identify and propose a set of principles on the jurisdiction, functioning and structure of military tribunals in the light of the existing corpus juris and international law. The regulation of military courts in accordance with international human rights law was essential for the proper administration of justice, the exercise of the right to a fair trial and the elimination of impunity.

28. Mr. JOINET, Special Rapporteur on the administration of justice through military tribunals, said that, while he agreed with Ms. Zerrougui and other speakers on the need to produce a set of principles or guidelines on the administration of justice through military tribunals, he had thought it more appropriate at the current stage of the study to submit recommendations for consideration by the Sub-Commission so as to give its members the opportunity to refine them. On the question of defining a military offence, he had made a start in paragraph 5 of his report (E/CN.4/Sub.2/2002/4) but it would be very difficult to produce a satisfactory definition. With regard to the remedy of habeas corpus, he was better acquainted with the remedy of amparo, or enforcement of a person's constitutional rights, which was of fundamental importance in Latin American countries, but he noted that Mr. Weissbrodt had argued that habeas corpus should be recognized as a non-derogable right of every individual. Concerning the need for a solution that was fair to both soldiers and civilians, he stressed the significance of the decision by the High Court of South Africa declaring the act establishing military courts to be incompatible with the Constitution (para. 17 and note 33).

29. It was easy to say that military courts should simply be abolished, but in practice it was very difficult to do so from a political point of view. That was why he had included the more realistic recommendation No. 6 (para. 35), on limiting the competence of military tribunals to the first degree of jurisdiction and requiring disputes concerning legality to be resolved by civilian courts; such practices would represent a major step forward.

30. It had come as something of a surprise to him to find that the military establishment was prepared to discuss the issues raised in his study, and he believed the time was ripe for a symposium attended by military personnel, of the kind proposed earlier by the International Commission of Jurists. There was no doubt that the events of 11 September 2001 had changed many things, and he suggested that the Sub-Commission should consider making a comparative analysis of the impact of those events on legal systems, including the introduction of special jurisdiction tribunals that closely resembled military courts. He also suggested that it would be useful to study the role of public prosecutors in military courts.

31. Mr. AL-ADHADH (Interfaith International) said he wished to draw attention to the lasting consequences of colonial legislation for the classification of Iraqi citizens. Originally classified as Ottoman or Iranian Iraqis under a law introduced by the British in 1924, Iraqis were currently classed under a law passed in 1980 in either the "A" category of "original Iraqi citizens", corresponding to the previous "Ottoman Iraqis", or the "B" category, corresponding to "Iranian Iraqis". The Baath Party's policy of deporting Iraqi Shi'ah, Shi'ah Kurds and other minorities, mainly during the war between Iraq and the Islamic Republic of Iran, was based on that classification.

32. Moreover, Government decree No. 474 of 1981 forced men and women married to someone from the "B" category to seek a divorce. In other words, the current Iraqi regime was practising discrimination on the basis of religion, in the case of the Arab Shi'ites, and ethnicity, in the case of the Shi'ah Kurds. He called on the Sub-Commission to examine the problem of the Iraqi minorities and to request the Iraqi regime to establish new citizenship laws to put an end to the discrimination against them.

33. Mr. NASEEM (International Human Rights Association of American Minorities) said that the Prevention of Terrorism Act introduced by the Indian Government in April 2002 included the following draconian features: it undermined the right to be presumed innocent until proven guilty, by automatically considering a person found in unauthorized possession of arms in a "notified area" as having links with terrorists; it allowed for summary trials if individuals failed to provide information and for offences that were punishable with imprisonment for a term of up to three years; it violated the privacy of individuals by allowing the interception of communications; it made no provision for challenges to the reliability of evidence; and it allowed cases to be transferred to courts outside the original state, so that cases relating to events in Indian-occupied Jammu and Kashmir, for instance, could be heard in a state that was more favourable to the Government. The Act was incompatible with international human rights treaties and standards and, in the words of Congress leader Sonia Gandhi, posed greater threats to the freedom of ordinary people than to terrorists.

34. The legislation was also shamefully discriminatory. All but a few of the 1,000 persons charged under the Act across India were Muslims, and the overwhelming majority of them belonged to Kashmir. The Act had also been selectively applied in the aftermath of the Godhra incident and the carnage that followed it in Gujarat: those accused of being involved in the incident itself had been charged, while those guilty of killing thousands of innocents afterwards had been conveniently overlooked. The Act was one of many laws used by the Indian Government to brutalize the Kashmiri people and silence dissenting voices. The state of the judicial rights of Kashmiris and Muslims in India should be a matter of great concern for the Sub-Commission, especially its sessional working group on the administration of justice.

35. Mr. BARNES (Indigenous World Association) said that, in the United States of America, the administration of justice was selective at best as far as indigenous peoples were concerned. Whether it was a question of land title to Alaska or simply disputes involving indigenous property, it was exceedingly difficult for indigenous people to bring a case to court and, even if they won the case, the United States authorities refused to implement the court's decision.

36. In the case of its dispute with the indigenous people of Alaska, the United States was having great difficulty in establishing its claim to title to the territory of the State of Alaska. The United States Supreme Court had found in 1975 that the "quitclaim" transfer of the territory possessed by Russia on the continent of America and the adjacent islands did not transfer title. Moreover, territorial title had not been acquired by Russia in the first place.

37. The State of Alaska and the United States of America were endeavouring to prevent the indigenous peoples from claiming their recognized title to Alaska. The United States of America had denied them participation and had subjected them to laws specifically targeting indigenous peoples and preventing them from stopping development in Alaska, in violation of several United Nations General Assembly resolutions. The organization he represented denied the right of the United States of America to adjudicate unilaterally on the title to Alaska and requested that the Sub-Commission study such situations, where indigenous people were refused justice and denied their human rights and fundamental freedoms as independent peoples.

38. Mr. Yokota, Vice-Chairperson, took the Chair.

39. Ms. ASSAAD (International Pen) said that bringing before military courts writers and journalists whose only "offence" had been to practice their right to freedom of expression and association was a clear example of the way in which trials of civilians by the military could breach international standards. International Pen was currently monitoring such cases in Lebanon, Turkey, Myanmar and Israel. She requested that the use of military courts to penalize writers and journalists who practiced their right to freedom of expression be included among the issues to be considered by the sessional working group on the administration of justice.

40. Mr. SÁNCHEZ (American Association of Jurists) said that Security Council resolution 1422 (2002) represented a brutal attack on the principle of independence of the judiciary and had dashed what little hope there had been of a relatively independent International Criminal Court. Article 16 of the Rome Statute of the International Criminal Court could not be interpreted as authorizing the Security Council to grant blanket immunity in advance to unspecified persons, a violation of a fundamental principle of law. While there might be some ambiguity in the English and French versions of the Statute, the Spanish text - which was equally authentic - allowed of no such interpretation: the Security Council had the authority only to request the suspension of a specific investigation or prosecution already under way.

41. The Security Council resolution invoked Chapter VII of the Charter of the United Nations. That was either an abuse of the provisions of Chapter VII or the Council believed that the United States' threat to veto peacekeeping missions constituted a threat to the peace. It had then been unable to find a better solution than to grant impunity to the personnel of the very State constituting that threat.

42. The resolution was a violation of article 16 of the Treaty of Rome and he wondered whether any State party to that Treaty would have the modicum of self-respect required to bring the issue before the International Court of Justice.

43. Mr. SUGA (Japan Federation of Bar Associations (JFBA)) said that his organization particularly welcomed the part of the report of the sessional working group on the administration of justice (E/CN.4/Sub.2/7) which dealt with the domestic implementation of the obligation to provide domestic remedies. Domestic implementation through the justice system was crucial to ensuring the effectiveness of international human rights treaties at the national level and the theme should be studied and discussed in plenary. For example, the Supreme Court of Japan did not adequately implement the international human rights instruments ratified by Japan. One of the most serious concerns was the persistent discrimination against children born out of wedlock in Japan which neither legislature nor judiciary was willing to rectify. Although article 24, paragraph 1 of the International Covenant on Civil and Political Rights provided that every child should have the right to protection, without discrimination, and article 26 provided that all persons were equal before the law without any discrimination as to birth, article 900, paragraph 4 of the Civil Code of Japan prescribed that the inheritance of a child born out of wedlock should be one half that of a legitimate child. In 1995, the Supreme Court had found that such a clause did not violate article 14, paragraph 1 of the Constitution, which prescribed equality under the law.

44. Mr. VINCENT (Pax Romana) said that, although there was an independent judiciary in India, it was not very accessible to the 160 million Dalits spread all over the country. Moreover, even though an Act had been passed to prevent atrocities against members of the scheduled castes and tribes, there was a low conviction rate, judicial delays and dilution of its scope, which had resulted in a denial of justice to Dalits. There was a clear lack of will on the part of law-enforcement officers to take action owing to caste prejudice or to deference towards higher-caste perpetrators. His organization therefore requested the Sub-Commission to carry out a study on the inherent bias of the judiciary against the Dalits and the lack of will among the police to pursue cases involving offences against Dalits.

45. Mr. Joinet's report on the administration of justice through military tribunals (E/CN.4/Sub.2/2002/4) proposed the transfer of cases involving civilians to ordinary courts pending the abolition of military tribunals. The situation in the Democratic Republic of the Congo required further measures, however. Since 1997, the Democratic Republic of the Congo had been operating a military court system which judged both military and civilian cases on the pretext that the country was at war. The competence of the military court in the Democratic Republic of the Congo covered everything from typically military offences to political offences and included ordinary crimes committed with a weapon. It was a court of first and last instance in that there was no right of appeal. In addition, the judges had no possibility of examining the legality of pre-trial detention, resulting in long periods of detention during the investigation, sometimes for as long as one year. He therefore requested that the Sub-Commission recommend the immediate abolition of military tribunals from which there was no appeal in order to ensure a fair trial for military personnel who were human beings with the same rights as others.

46. Mr. Pinheiro resumed the Chair.

47. Ms. SHAWL (International Islamic Federation of Student Organizations) said that, in Indian-occupied Jammu and Kashmir, the authorities were flouting the provisions of the International Convention on Civil and Political Rights to which India was a party. The

promulgation of the Prevention of Terrorism Act in April 2002 had accorded the Indian security forces impunity and wide discretionary powers which they had mercilessly abused. India had rejected the international human rights community's repeated calls for independent investigation into alleged incidents of mass murder and the killings of civilians.

48. Two incidents in Jammu and Kashmir provided evidence of the barbarity of the Indian security forces and revealed a pattern of Indian policy of concealing the truth and mutilating evidence. The first was the massacre of 35 Sikhs in Chittisinghpora in March 2000 and the subsequent killing of five persons, asserted by the Indian forces to be foreign militants responsible for the massacre but later found to be innocent local Kashmiri villagers. The second incident was the killing of three alleged terrorists in the Mendhar sector. Indian army troops had been charged with their abduction from their homes and their murder. Such incidents proved the need for Jammu and Kashmir to have access to international human rights bodies and substantiated the repeated calls for independent international investigation into every alleged case of cross-border terrorism. The Sub-Commission should extend its moral support to the Kashmiris' demand for the deployment of independent observers and fact-finding missions to prevent the abuse of their fundamental rights.

49. Ms. AVELLA (World Federation of Trade Unions) drew the Sub-Commission's attention to the intimidation and harassment of trade-union leaders in Colombia. Strengthened by the Military Penal Code of 2000, the military justice system had been employed to prevent fair trials from taking place in cases related to crimes such as extrajudicial killings and sexual abuse. The armed forces used paramilitary groups to carry out killings on their behalf, and threatened human rights defenders or journalists in order to prevent investigations of the incidents.

50. The Special Representative of the Secretary-General on the situation of human rights defenders had denounced the weakness of the Colombian judicial system following her visit to the country in October 2001, and expressed concern about the case of the former General Rito Alejo del Río. The Procurator-General had dropped all charges against the former General, who had been accused of numerous crimes including the murder of trade-union leaders. Subsequently, two witnesses for the prosecution of the former General had been assassinated.

51. Former General del Río was not the only high-ranking officer of the armed forces to escape prosecution. Rear-Admiral Rodrigo Quiñones had not been charged by a military tribunal for at least 57 murders of trade unionists and human rights defenders during 1991 and 1992 on the grounds of lack of evidence. Subsequently, a judge responsible for investigating the case had been assassinated. A case involving the attempted murder of the President of the State Workers Federation in December 2000 by army officers had recently been dismissed, and many similar cases had failed to reach the courts.

52. A report by the Committee on Freedom of Association of the International Labour Organization (ILO), published in June 2002, had drawn attention to the murders of 113 trade unionists over the previous year, and urged the Government of Colombia to bring those responsible to justice.

53. She thus requested the Sub-Commission to pay urgent attention to the policy of terror employed by the Government of Colombia, and to seek to ensure that crimes committed by members of the armed forces did not remain unpunished.

54. Ms. PARKER (International Educational Development) said that her organization was deeply concerned about the severe curtailment of fundamental principles of justice in a number of countries as a result of responses to the events of 11 September 2001. In particular, domestic legislation had been adopted in the United States of America and elsewhere that directly violated articles 9 and 14 of the International Covenant on Civil and Political Rights. The United States of America was holding people in a prison camp at Guantánamo in Cuba who had been in the armed forces of Afghanistan and were clearly prisoners of war under the terms of the Geneva Conventions and should be guaranteed their rights as such. Other prisoners were non-combatants and might be chargeable under criminal law but were also entitled to its protection, such as the right to counsel, presumption of innocence and the right to petition in ordinary criminal courts. The international community had a duty to insist that the United States honour all rules pertaining to all prisoners.

55. In addition to the new legal regimes contradicting the Geneva Conventions and human rights legislation regarding prisoners of war, the United States had adopted national anti-terrorism legislation which abrogated the protection of human rights. Included in the new list of terrorist organizations were environmental and anti-vivisection groups. Targeting such groups would have no impact whatsoever on actual terrorist threats against the United States of America. The new act also curtailed the right to counsel, "legalized" incommunicado detentions, allowed the use of "hearsay" evidence, and gave the authorities the right to invoke State security to deny or present evidence. She appealed to the Sub-Commission to condemn the new Act. Several other countries had adopted similar legislation, some of it applicable to aliens only. Her organization therefore welcomed the work of Ms. Zerrougui on the issue of discrimination in the criminal justice system and urged the Sub-Commission to make a full study of the issue.

56. Mr. AL-SABAH (North South XXI) said that the Government of Israel had committed serious crimes against Palestinians in the city of Jenin, and was continuing to carry out similar activities with impunity. It deliberately endangered the lives of civilians by perpetrating acts of torture and harassment, preventing the arrival of medical and water supplies, denying access to humanitarian workers, destroying private property and infrastructure, and using refugees as human shields to facilitate the achievement of military objectives. Although the recent report by the United Nations Secretary-General had referred to the violence employed by the Israeli army against ordinary Palestinians, the United Nations and the rest of the world had failed to take action to prevent such atrocities. He called for a concerted international effort to provide protection to the Palestinian people, whose enjoyment of human rights was a precondition for peace in the region.

57. Mr. BEN MARZOUK (Young Doctors Without Frontiers Tunisia) said that practical steps must be taken, especially in countries engaged in conflict, to enhance the independence and integrity of the judiciary, with a view to ensuring respect for human rights and fundamental freedoms. In that context, the United Nations system provided invaluable technical assistance. Close international cooperation was required in order to combat organized crime effectively, particularly with regard to terrorism. The development of a comprehensive code of ethics for

judges, the consolidation of the rule of law and elimination of racial discrimination were crucial objectives in enhancing the administration of justice throughout the world. Some countries required particular assistance to improve the forensic component of judicial inquiries. Forensic experts must be properly trained to seek consent from the accused without interference from security officers before conducting medical examinations, and to write accurate, comprehensive reports.

58. The conclusions of negotiations concerning the United Nations Convention against Transnational Organized Crime and its additional protocols should be given careful consideration, especially bearing in mind the concerns expressed by States. Those considerations should enable experts to gain a better understanding of countries' training and technical assistance needs.

59. Ms. THEPHSOUVANH (Transnational Radical Party) said that her organization was concerned about the administration of justice in Laos, where human rights violations took place regularly in the form of arbitrary arrests, disappearances, torture and other cruel and degrading treatment. Laos had failed to submit a single report to the Commission on Human Rights since 1984. Meanwhile, its code of criminal procedure provided justification for the arbitrary arrest of human rights defenders, ethnic and religious minorities and political opponents on the grounds that any opposition to the ruling Communist Party constituted a threat to national security. Hundreds of prisoners had been detained, sometimes for several years, without the right to a fair trial or access to medical care.

60. She drew attention to the situation of five leaders of the peaceful pro-democracy demonstration of 26 October 1999 who had been detained arbitrarily since that date. For over two years, the Government of Laos had denied their existence, although recent statements had contradicted such denials. She urged the Sub-Commission to include the names of those leaders in its resolution on human rights defenders, and to request the Commission on Human Rights to do everything in its power to persuade the Government of Laos to release them in accordance with international law. An observation mission should be sent to report back on the situation in Laos, and an appeal should be made to the Government to respect international human rights standards.

61. Mr. SARAF (World Muslim Congress) said that he had been imprisoned and tortured by order of the Governor of the Indian State of Jammu and Kashmir, as retribution for having expressed his views regarding the right of the people of Kashmir to self-determination under the auspices of the United Nations. The legislation in force in that and other states of India gave the police extraordinary powers to detain or even shoot suspected criminals at sight without trial. The situation was equivalent to a permanent state of undeclared emergency.

62. For example, the Disturbed Areas Act (1990), Armed Forces Special Powers Act (1990) and Public Safety Act (1978), provided Indian forces in Jammu and Kashmir with wide-ranging powers of arbitrary detention on the pretext of the need to maintain public order. The Prevention of Terrorism Act (2002) extended such powers to allow for detentions of up to 90 days without

trial, as well as for confessions to senior police officers to become admissible as evidence in court. Despite having signed the International Covenant on Civil and Political Rights, India had derogated from many of its provisions on the pretext of a state of emergency in the aftermath of the terrorist attacks of 11 September 2001.

63. He urged the Sub-Commission to call for a wide-ranging investigation into human rights violations in Jammu and Kashmir and to appeal to the Indian Government to bring its legislation into conformity with international law.

64. Mr. SOTTAS (World Organization Against Torture) said that his organization had already drawn the attention of the Sub-Commission to the fact that witnesses must be free to testify without pressure or intimidation. Another factor that often prevented the truth from emerging in judicial proceedings was the oath of secrecy taken by medical professionals. Even though patients under most legal systems were entitled to release their doctor from the obligation to secrecy, many victims of torture were unable to do so, as a result either of the psychological effects of the abuse they had suffered or to pressure exerted upon them. Consequently, doctors sworn to secrecy were often unable to report cases of torture of which they had become aware.

65. His organization had arranged a symposium on 26 June 2002 with a view to developing an effective response to the problem. The participants had decided to ask the Sub-Commission to consider the subject and to make the following recommendations to Governments: doctors should be released from their obligation to secrecy in cases of torture; a mechanism should be developed to enable doctors to inform national authorities or the International Criminal Court directly of cases of torture, and information and training for doctors and medical students on the traumatic effects of torture should be promoted. The Sub-Commission might also wish to consider whether it was necessary to amend or add to the Principles of Medical Ethics adopted by General Assembly resolution 37/194 of 18 December 1982.

The meeting rose at 6 p.m.

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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-fourth session

SUMMARY RECORD OF THE 9th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 August 2002, at 10 a.m.

Chairperson: Mr. PINHEIRO

later: Ms. ZERROUGUI
(Vice-Chairperson)

later: Mr. PINHEIRO
(Chairperson)

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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (continued)

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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The meeting was called to order at 10.10 a.m.

ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY (agenda item 3) (continued) (E/CN.4/Sub.2/2002/4-6; E/CN.4/Sub.2/2002/NGO/4, 14-16, 20, 22)

1. Ms. GRAF (International League for the Rights and Liberation of Peoples) said that states of emergency involved a whole series of measures and restrictions which could include the suspension of constitutional rights and freedoms. That was the case in most provinces of south-eastern Turkey, where a state of emergency had been in force for around 20 years and had been extended 46 times. As Turkey hoped to become a full member of the European Union, it planned to lift the state of emergency by the end of 2002 in the two provinces where it still applied. Nevertheless, legitimate doubts could be raised as to whether that would bring about any real change in the situation, since, in two other provinces where a state of emergency had supposedly been lifted in 1997, the administrative office responsible for enforcing the states of emergency had still been in place three years later. Furthermore, according to a recent National Security Council decision, the administration responsible for the state of emergency was to be replaced by a secretariat whose tasks and responsibilities were not yet known. It might simply be the same institution under another name. In the context of the study of human rights and states of emergency, the International League for the Rights and Liberation of Peoples requested Turkey, through the Sub-Commission, to provide details of the secretariat's structure and functions. It also called on the international community to ensure, through the appropriate mechanisms, that the Turkish Government's announcements concerning the reform of human rights standards were effectively implemented.

2. The International League for the Rights and Liberation of Peoples also requested the Sub-Commission to mandate Ms. Zerrougui to carry out a full study on discrimination in the criminal justice system, as a follow-up to her excellent working paper, and to provide her with the necessary resources to do so.

3. Mr. PUNJABI (Himalayan Research and Cultural Foundation) said that the efforts of the United Nations system with regard to the independence of the judiciary - as embodied in the Basic Principles on the Independence of the Judiciary, adopted in 1985 - had been only a relative success. Although the importance of the issue had become increasingly widely recognized in recent years, there were problems in extending judicial guarantees to human rights other than individual freedoms, as had been pointed out in the report of the sessional working group on the administration of justice (E/CN.4/Sub.2/2001/7).

4. The independence of the judiciary was a pillar of democracy, and it was therefore a matter of great concern that Governments in some States were interpreting their respective constitutions as they wished and appointing sympathetic judges to bolster their own power. The international community should put pressure on regimes that manipulated the judicial system under a facade of democracy.

5. Ms. BOWDEN (Liberation), recalling that free elections were fundamental to democracy, said that in south-east Turkey, where most of the population was Kurdish, voters

had been subjected to pressure from the Army and ballot papers had been stolen during the count. Liberation therefore called for observer teams to be sent to Turkey to monitor the November 2002 elections.

6. Liberation also urged the Sub-Commission to consider the problem of the impunity enjoyed by the perpetrators of numerous human rights violations in Jammu and Kashmir. Under a range of laws governing the activities of the Indian armed forces in that region, the military were able to fire on civilians without fear of prosecution.

7. Mr. OMOTOSHO (Observer for Nigeria) said that citizens' rights in the area of criminal justice were guaranteed under Nigerian law and that victims of violations of those rights could seek redress through the legal system. The current Government attached great importance to the independence of the judiciary and had therefore decided to wage war on corruption. It had also improved judicial officials' conditions of service and undertaken an extensive reform of the prison system.

8. According to the working paper on discrimination within the criminal justice system, most judicial systems did not cater for the needs of vulnerable groups in society; he therefore called upon the Sub-Commission to carry out a study of the need to reform criminal justice systems and to provide advisory services to developing countries to help them establish an impartial judiciary.

9. Noting the growing incidence of discriminatory practices against immigrants in developed countries, despite the international community's efforts to combat racism and discrimination, he called upon the Sub-Commission to assist in implementing the Programme of Action of the Durban World Conference against Racism and to cooperate with the special mechanisms on follow-up to the Conference established by the Commission on Human Rights, by making its views and expert studies available to those mechanisms.

10. Ms. BACHTOBJI (Observer for Tunisia) said that Tunisia had opted to build a society based on the rule of law and the promotion of human rights and, to that end, gradual reforms had been undertaken in the administration of justice. The measures adopted included a reduction in the length of police custody, the introduction of community service as an alternative penalty and the creation of the post of enforcement judge. Other steps had been taken as part of the constitutional reform in June 2002, including measures making police custody and pre-trial detention subject to court supervision - arbitrary detention being prohibited by law; facilitating the granting of conditional release in certain cases; and introducing the practice of mediation in criminal cases.

11. It was regrettable that certain non-governmental organizations (NGOs) took advantage of the opportunity they were given to address the Sub-Commission and spread disinformation, belittling anything that could be an indication of progress in a Muslim Arab country. With regard to the situation of Mr. Hammami and his wife Ms. Nasraoui, she said that Mr. Hammami had been found guilty of offences under criminal law - including incitement to rebellion - following a fair trial. He was regularly visited in prison by a doctor and members of his family. Furthermore, he had not yet exhausted all domestic remedies.

12. As to his wife, her decision to stage a hunger strike constituted attempted blackmail, and the intention behind the publicity surrounding it had hardly been of a humanitarian nature. Similarly, the allegations that her daughters had been harassed contained not a shred of truth and were merely a ploy to hijack the justice system.

13. Ms. HOUMMANE (Observer for Morocco) said that her delegation wished to emphasize Morocco's determination to consolidate the progress it had made towards democracy and the rule of law, as shown by its launch of a comprehensive reform policy. In the area of the administration of justice, the office of ombudsman - known as the Diwan Al-Madhalim - had been established in December 2001: the ombudsman's task was to seek reparation for injustices suffered by users of public services, to cooperate with the judiciary and to reinforce the work of the Human Rights Advisory Council. He was quite independent of the executive, legislative and judicial branches and his decisions were completely impartial. He acted as a mediator between citizens and State administrations and encouraged those administrations to uphold the rule of law and equity. In addition, King Mohammed VI had reorganized the Human Rights Advisory Council in April 2001, giving it greater powers and rationalizing its working methods to enable it better to promote human rights.

14. In the area of prison administration, a new law enacted as part of the overall reform of the justice system afforded better protection for detainees by bringing domestic legislation into line with the Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in July 1957. Lastly, she said that draft amendments to the powers of the permanent military court were in preparation, whereby only members of the Army could be tried under its jurisdiction.

15. Mr. SUNGAR (Observer for Turkey) drew the attention of the Sub-Commission to some of the many constitutional and legislative amendments adopted by the Turkish Parliament on 3 August 2002. The death penalty, already subject to a moratorium since 1984, had now been abolished de jure except in times of war or imminent threat of war. The legal restrictions on the learning of languages and dialects traditionally used by citizens in their daily lives had been lifted, as had the restrictions on radio and television broadcasting in those languages and dialects. Review of civil and criminal cases in the light of decisions of the European Court of Human Rights was now possible. Implementing decrees would be adopted by the competent authorities and the relevant provisions of law amended accordingly. The amendments once again demonstrated Turkey's commitment to improving the human rights situation.

Statements made in exercise of the right of reply

16. The CHAIRPERSON invited observer delegations wishing to exercise their right of reply to take the floor.

17. Mr. LOUTFY (Observer for Egypt) said that it was important to remain objective and not use the platform offered by the Sub-Commission to make statements that were unacceptable. NGOs had always been active in Egypt and the State respected their work, making them subject to financial and legal regulation only in order to protect the public interest. The trial of Dr. Ibrahim had not had any bearing on freedom of opinion or expression. He had been accused of fraudulently obtaining funds from the European Union; his trial had been conducted with all

judicial guarantees and he had leave to appeal. No one was above the law in Egypt and the applicable law was domestic law. Egypt would give details of the case to anyone requesting them.

18. Mr. MAMADOU (Observer for Mauritania) said it was regrettable that certain individuals distorted reality and spread allegations that were completely baseless. In fact there was no discrimination based on race or social or ethnic origin in Mauritania. The trials referred to by the representative of the Movement against Racism and for Friendship among Peoples had been conducted in public and following due process of law. The accused had enjoyed their full rights, in particular the right to a defence, in the presence of foreign observers, including representatives of Amnesty International and the International Commission of Jurists. As to the alleged existence of refugees, he said that Mauritania was an open country where all citizens were free to come and go without any administrative hindrance and that no Mauritanian could seriously claim refugee status. Mauritania was a State governed by the rule of law and was characterized by the separation of powers, political pluralism and equality among citizens: those citizens did not experience discrimination of any kind and lived harmoniously in peace, enjoying stability and economic and social progress.

19. Mr. ASWAD (Observer for Iraq) said he was astonished at the way in which certain people used the forum of the Sub-Commission to make statements devoid of all objectivity on issues that were not even on the agenda. The NGO Interfaith International, for example, had made unfounded allegations against Iraq and should instead have taken account of the situation in that country, which had been subject to a 13-year embargo that had claimed thousands of civilian victims and was now threatened with attack by a major Power. It would be preferable to keep to the facts.

20. Mr. PENA GHISLENI (Observer for Brazil), referring to the statement made the previous day by the International Confederation of Free Trade Unions, said that the municipal police were investigating the murder of Bartolomeu Moraes da Silva and had arrested two suspects. The crime appeared to be one committed under ordinary law and there was nothing to suggest that Pará State officials were implicated. The appalling violence done to the victim could not be described as torture within the meaning of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The federal Government was following the case very closely and would provide further information to any NGOs requesting it.

21. Mr. REYES RODRÍGUEZ (Observer for Colombia) said it was regrettable that certain NGOs, such as the World Federation of Trade Unions, were in the habit of presenting figures devoid of scientific rigour, distorted facts and inaccurate dates, and of making statements based on articles from the media purely in order to impress their audience. Far from promoting the cause of human rights, such statements compromised the dialogue between States and NGOs and, moreover, contributed nothing new. The Colombian Government was not unaware of the violations committed by illegal armed groups in the conflict in Colombia and did not deny their seriousness.

22. Mr. SORABJEE said that more attention should be paid, under the agenda item on the administration of justice, to the issue of the impunity enjoyed by perpetrators of serious human

rights violations. Impunity was unacceptable, firstly because it ran counter to the basic principle that no one was above the law, secondly because it was discriminatory insofar as the only beneficiaries were those in senior positions, and lastly because it violated victims' right to see perpetrators punished. Furthermore, it elicited deep feelings of resentment among victims or family members, which in turn gave rise to fresh acts of violence. Consideration should be given to establishing a compensation fund for victims, to be maintained by the fines imposed on perpetrators.

23. The CHAIRPERSON declared closed the debate on agenda item 3.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (E/CN.4/Sub.2/2002/3, 8, 9-12, 14, 15, 17, 41, 43 and 44; E/CN.4/Sub.2/2002/NGO/6, 9-12, 17, 21 and 26; E/CN.4/Sub.2/2002/WG.2/WP.1 and Adds.1 and 2, and WP.2)

24. Mr. GUISSÉ, introducing the study on the relationship between the enjoyment of economic, social and cultural rights and the promotion of the realization of the right to drinking water supply and sanitation (E/CN.4/Sub.2/2002/10), requested by the Commission on Human Rights in its decision 2002/105 of 22 April 2002, explained that the document was a preliminary report and its aim was merely to set out the key ideas which would be developed subsequently.

25. Water was the source of life and access to drinking water was crucial to the existence of every human being. More than 1.5 billion people around the world currently had no access to safe drinking water. Moreover, the World Health Organization (WHO) estimated that 80 per cent of illnesses were transmitted by contaminated water, a fact that should prompt the international community to give serious consideration to the question of the right to drinking water, a right that must be regarded as non-derogable, since it was linked to the right to life.

26. The shortage of water had two principal causes. First of all, there were natural causes such as desertification, the drying-up of water courses and depletion of the ozone layer, as well as heat evaporation, which affected not only sub-Saharan countries. Advancing desertification was exacerbating the imbalance in the distribution of water throughout the world, as could be illustrated by a comparison between Canada, which had numerous lakes that provided vast quantities of fresh water to its population, and sub-Saharan Africa, where there was a cruel lack of water. Water shortages were also caused by human activities. The agricultural sector was currently the leading consumer of water, and agriculture was the basis of food production, which explained the linkage between the right to water and the right to food. There was thus a shortage of water in every country of the world, and if, as predicted, half of the world's population would be suffering from serious water shortages by 2015, the problem then would be a source of conflict around the world.

27. The right to drinking water was recognized in international law. It was specifically mentioned in two conventions in force, namely the Convention on the Elimination of All Forms of Discrimination against Women, ratified by 164 countries, and the Convention on the Rights of the Child, ratified by 190 countries. In the World Declaration on the Survival, Protection and Development of Children, adopted at the World Summit for Children in New York in 1990, the heads of States and Government had made a commitment to promote the provision of clean water for all children. This commitment constituted the legal basis, at the international level, for

the right to drinking water, at least with regard to women and children. The Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Water Courses and International Lakes, signed in London in June 1999, had been the first international instrument of positive law to take a position in favour of access to safe water for all, its objectives being access to drinking water and sanitation for everyone. The same was stated in the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (the Protocol of San Salvador), which had entered into force in November 1999. The right to drinking water was also recognized at the national level, and States had adopted legislation to underpin that right in law.

28. Yet if the right to drinking water and sanitation was to be made a full human right, individuals must be given means of access to drinking water. The price of water, as an economic and social good, was a vital factor in that regard. In the countries of the North, the situation had reached the point where the discussion focused on social pricing. Ireland, where water was distributed free of charge to all, was an exception, since the majority of Western countries had opted for wholesale privatization, solely for the purpose of setting up commercial ventures. In countries of the South, some companies privatized water resources only to resell them at exorbitant prices. That was a violation of the right to drinking water, particularly as the water supplied by such companies was in many cases polluted.

29. States must work together to find a solution to the water problem based on international solidarity, as they were required to do under Articles 55 and 56 of the Charter of the United Nations. All countries, both in the North and in the South, must take action if water, the source of life, was to be accessible to all.

30. Mr. PREWARE welcomed the detailed report submitted by Mr. Guissé. The right to drinking water was taken for granted by many, but the study would open everyone's eyes to the fact that some 1.5 billion people had no access to safe drinking water and nearly 4 billion people lacked adequate sanitation. Those facts underscored the magnitude of the problem facing the world. There was increasing recognition of the need to manage vital water resources more as an obligatory service than as a commercial venture. The study emphasized that obligation by stressing the right of access to water and the right to adequate sanitation. Mr. Guissé could therefore perhaps clarify the distinction between the right to drinking water and the right of access to water.

31. He urged Mr. Guissé to develop his study further, and to focus particularly on the acute problem of water in arid regions and the issue of the cost of water for disadvantaged groups. In addition, in many countries where water was plentiful - in his own country, Nigeria, for example - most of that water was unhealthy in areas where certain transnational corporations operated. In his view, Mr. Guissé's study could help to raise public awareness of all such issues and of the importance of access to drinking water, which was far from guaranteed for all.

32. Ms. Zerrougui Vice-Chairperson, took the Chair.

33. Mr. SORABJEE thanked Mr. Guissé for his thought-provoking working paper. He recalled that Mahatma Gandhi had wanted every Indian to be entitled to safe water and had consequently made recognition of that right one of his main objectives. The right to drinking

water was, in fact, now guaranteed under the Indian Constitution. The Supreme Court of India held that the first human right was the right to life, that right being understood not only as pertaining to the individual's physical existence but also as including, as one of its fundamental components, the right to safe water. In India, that right was enforceable in law, and a commission had been established to ensure that it was respected. He himself had referred to Mr. Guissé's work during the commission's deliberations.

34. Mr. OGURTSOV said that drinking water was in short supply not only in developing countries but also in developed countries. That shortage, moreover, was largely due to human activities. In the lifetime of a single generation, rivers, lakes and even seas had been polluted by industry, as exemplified by Russia's Lake Baikal and the Aral Sea. The disastrous impact of such activities on water resources obviously warranted closer attention. It would be appropriate to highlight the role of transnational corporations in that regard and to make a comparative study of the cost of drinking water in various countries.

35. Ms. BETTEN said that, while international law was certainly important, no legal instruments, however comprehensive, would ever bring a single precious glass of water to countries where water resources were non-existent. She would like the next report to make reference to specific projects and programmes, including within the United Nations system, that had been implemented to increase drinking-water resources.

36. Mr. Soo Gil PARK said the fact that the planet's resources were not infinite had only begun to be realized in the middle of the twentieth century. The use of those resources, and particularly of fishery resources, had then started to be regulated. It had also been recognized that water was not an infinite resource and in 1997 the United Nations General Assembly had adopted the Convention on the Law of the Non-navigational Uses of International Watercourses. The General Assembly had extended the scope of the Convention to cover, among other things, the economic and social needs of the States concerned and, in that connection, had emphasized the importance of preventing and controlling the pollution of watercourses. The right to drinking water was also implicit in the International Covenant on Economic, Social and Cultural Rights, notably in articles 11 and 12, concerning the right to adequate food and the right to health.

37. Given the close linkage between the right to drinking water and other human rights, he supported Mr. Guissé's position on the need to entrust water-resource management to public-service utilities and not to private companies whose sole aim was the pursuit of profit.

38. It would be useful if Mr. Guissé could give a more precise account of States' obligations under international law with regard to the provision of drinking water. In paragraph 22 of his report, Mr. Guissé referred to the consequence of the right to drinking water as being "free water". He would like to know what exactly was meant by that term.

39. Mr. DECAUX paid tribute to Mr Guissé's work, but believed that it would be necessary to rank the legal texts cited and define the terms used more precisely. He agreed with Mr. Soo Gil Park, in particular with regard to the concepts of free water and access to drinking water. Free provision was acceptable only if there was no wastage. The term "access" should also be defined. In France, for example, a prefect could prohibit the watering of lawns if drought conditions so required.

40. Mr. EIDE said that, in his opinion, Mr. Guissé's study was of great importance. Two points that he would like to see developed in the future were those of water distribution and the prospects for developing water-saving techniques.

41. Ms. JOURDAN (Association of World Citizens) said that there was a parallel between the serious problem of drinking water and the problem of access to health. She wondered whether there was debate on water usage, followed by referendums, in any countries. She also wondered what regional conventions existed on the matter and what role was played by the bodies responsible for monitoring their implementation. Other problems included the cleaning up of sources of water that presented a danger to health; the movement of population groups as a result of armed conflicts to areas where the water supply was polluted or inadequate; and, as in the case of Palestine, the issue of ownership of the subsoil containing the water resources.

42. Mr. GUISSÉ thanked Mr. Preware for drawing attention to the urgent problem of water resources in arid zones and the issue of the cost of drinking water, and particularly the problem of transnational corporations selling often polluted water at exorbitant prices. Water pricing was indeed a major preoccupation in the countries of the South.

43. He was grateful to Mr. Sorabjee for recalling that Gandhi had made the right to drinking water one of his main concerns. He was honoured to hear that the Indian commission on drinking water had referred to his work and asked to be informed of their decisions.

44. Mr. Ogurtsov had rightly stated that water was beginning to run short not only in the countries of the South but also in the North, where a number of lakes, for example, were already prone to dry up periodically. Such water shortages were indeed related to human activity, as had been recognized for more than 10 years.

45. He entirely agreed with Ms. Betten. There was a yawning gap between the legal instruments and reality on the ground. He intended to raise the issue of the development of water resources in practical terms.

46. Mr. Soo Gil Park had rightly highlighted the link between the right to drinking water and sanitation and other human rights, including the right to peace: in 15 years' time, conflicts were more likely to centre on water than on oil. He had also mentioned States' obligations. That was a matter of context: in the South, States needed to confront private companies and enforce the right to drinking water.

47. Replying to Mr. Decaux, he said that it was difficult to discuss the legal texts in the appropriate order in a preliminary report. With regard to his comments on free provision of water, he would point out that, when a State intervened, it must obviously enforce the right of all to drinking water and not encourage waste.

48. With regard to the role of regional institutions, as mentioned by the Association of World Citizens, he cited the example of the European Court of Human Rights, which had on several occasions punished violations of the right to drinking water. The European Court's case law could, in fact, provide a model for other regional organizations.

49. Mr. Pinheiro resumed the Chair.

50. Mr. BENGOA, introducing the programme of work of the ad hoc working group established to prepare a study to contribute to the drafting of an international declaration on extreme poverty and human rights (E/CN.4/Sub.2/2002/15), said that the ad hoc working group, consisting of Mr. Guissé, Mr. Pinheiro, Mr. Yokota and himself, had decided that the central point was to understand poverty and its consequences as phenomena affecting the right to life and, therefore, a number of rights that took precedence over any secondary strategic or tactical considerations. The members of the working group had agreed that a declaration on poverty should refer to the inalienable rights of human beings and the principle of human dignity, which could not fail to elicit a favourable response from States and other agents.

51. The ad hoc working group had decided to study contemporary forms of poverty, i.e. the most extreme forms of poverty, systems of absolute destitution that were the consequence of the economic, political and social processes that currently dominated the world. While poverty in general prevented the enjoyment of economic, social and cultural rights in many ways, extreme poverty was in itself a gross violation of the right to life and human dignity and thus struck at the heart of the human rights system, which was the foundation of world peace, security and human society.

52. One of the main hypotheses put forward by the group was that new forms of globalization had given rise to a new form of poverty, "modern poverty", which was characterized by, among other things, the marginalization of many populations and regions of the world as a result of the breakdown of systems based on self-sufficiency. The globalization of communications had caused a "revolution of needs" among broad sectors of the world's population that had previously been self-sufficient but now, with the disruption of traditional patterns of production and consumption, were no longer able to meet their minimum needs.

53. The study took a multicultural approach to the analysis of developments and attempted to avoid ethnocentric visions based on particular lifestyles or patterns of consumption. In analysing the causes of poverty, the group had also made efforts to take into account all external and internal factors leading to contemporary forms of poverty, without neglecting aspects relating to "good governance", social and economic policies and international, national, regional and local systems of government.

54. The right to life, defined in terms of the biological sustainability of human beings, consisted of four basic rights, namely the right to adequate food, the right to drinking water, the right to shelter and the right to health. For the purposes of the study, the working group considered that a person, or group of persons, who lacked sufficient food, had no access to drinking water, had no place to live and whose health was at risk, was living in extreme poverty. It also considered those four basic rights to be the necessary and essential minimum that facilitated the exercise of all other rights, economic, social and cultural, as well as civil and political.

55. The proposed study would review States' obligations at the national and international levels, and the obligations of international institutions, both public and private. It would also give an account of the situation of poverty in the world, with particular emphasis on the

enormous inequalities caused by globalization. Its aim would be not to repeat the work on poverty done by many other institutions, but to seek information and cooperate with international governmental institutions, regional institutions, specialized agencies and NGOs in order to undertake a dynamic study of contemporary forms of poverty.

56. The programme of work of the ad hoc working group would cover a three-year period: a preliminary report would be submitted in the first year, a progress report in the second year and a final report, together with a draft declaration (the main headings of which were listed in the programme of work), in the third year. The ad hoc group did not propose to undertake an academic study of such complex issues but to invite the various governmental, intergovernmental and non-governmental actors to come up with a responsible proposal on the basis of broad debate. To that end, it intended to organize various seminars and workshops open to all those actors. Work undertaken by specialists, with no input from organizations representing disadvantaged sectors, Governments or persons engaged in the fight against poverty throughout the world, would serve no purpose.

57. Mr. YOKOTA, speaking as a member of the ad hoc working group, emphasized that the basic premise of the proposed study was that poverty was in itself the source of numerous human rights violations. Apart from the fact that it was itself a violation of economic, social and cultural rights, it led indirectly to other violations, including sexual exploitation for commercial purposes, to give but one example.

58. Many steps had already been taken by Governments to combat poverty at the national level and by international organizations to encourage cooperation and support the actions taken in that regard, but those efforts had frequently failed. Midway through the United Nations Decade for the Eradication of Poverty (1997-2006), more than one billion people were still living in poverty. One of the development objectives of the 2000 Millennium Declaration was to reduce by half the number of people living in poverty by 2015. It was now essential to implement new, concrete plans of action to try to reach that objective.

The meeting rose at 1 p.m.

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SUMMARY RECORD OF THE 10th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 6 August 2002, at 3 p.m.

Chairperson: Mr. PINHEIRO

later: Mr. YOKOTA
(Vice-Chairperson)

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ECONOMIC, SOCIAL AND CULTURAL RIGHTS (continued)

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The meeting was called to order at 3.15 p.m.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 4) (continued) (E/CN.4/Sub.2/2002/3, 8-12, 14, 15, 17, 41, 43 and 44; E/CN.4/Sub.2/2002/NGO/6, 9-12, 17, 21 and 26; E/CN.4/Sub.2/2002/WG.2/WP.1 and Add.1 and 2 and WP.2)

1. Mr. DECAUX, said, with respect to the report by the coordinator of the ad hoc working group established to prepare a study to contribute to the drafting of an international declaration on extreme poverty and human rights (E/CN.4/Sub.2/2002/15), that some clarification was necessary at the conceptual level. There was a tendency to approach the issue of poverty and extreme poverty from a purely quantitative perspective, with the emphasis on reducing numbers rather than tackling the most intractable problems. A more positive, qualitative, approach was needed that would encompass all human rights, including political and cultural rights that might seem "secondary" in situations of extreme need, as well as the basic needs related to economic and social rights.

2. The artificial distinction between "formal rights" and "real rights" should be discarded in the context of extreme poverty. The marginalized must be empowered, through the recognition of all their rights, to determine their own fate so that they could work together towards a form of economic development, social progress and cultural dignity of their own choice, rather than one imposed on them. That form of "bottom-up globalization", as it had been called in the Social Forum, was first and foremost a choice to be made by each society.

3. At the practical level, the working group should follow the practice of the Social Forum by involving all five geographical groups in its work, in order to show that the problem of poverty concerned all societies. In particular, the problems in the post-Communist countries of Eastern Europe should be taken into account, as well as those in the countries of Western Europe. The methodological approach to indicators in the report tended to focus on States, with one of the themes being "human rights violations by Governments and poverty" (E/CN.4/Sub.2/2002/15, p. 10), but the fact that poverty was a social phenomenon should also be taken into account.

4. Mr. RAJKUMAR (Pax Romana) said there was a need to go beyond the rather legalistic approach proposed in the report and focus more on the actual problems of the poor and on practical ways to lift them out of poverty. Simply coming up with a definition of extreme poverty would not help the poor. The approach also seemed to be based mostly on social rights but, as Mr. Decaux had said, there was a need to include all human rights.

5. Mr. EIDE said he very much hoped that the countries of Europe would be involved in the future activities of the working group. In the otherwise excellent programme of work, a significant omission in the part dealing with human rights violations by Governments concerned the lack of regulation by Governments, which was often a cause of impoverishment. To give an example, their failure to protect small fishermen meant that many of the latter were driven out of business by industrial fishing fleets.

6. Mr. SORABJEE said that corruption should also be included among the human rights violations by Governments. Too often funds intended to improve the situation of economic,

social and cultural rights by building schools, hospitals and so on were siphoned away to offshore bank accounts. There was also a need to address the problem of discriminatory policies adopted in the allocation of aid. Such policies were often unofficial and very subtle, based on religion or race, and their effect was to increase the marginalization of certain groups. Lastly, he hoped that the misleading term "modern poverty" would be dropped: there was nothing "modern" about poverty.

7. Mr. PARY (Indian Movement "Tupaj Amaru") said that there was no mention in the programme of work of foreign debt, which was a subtle mechanism for transferring natural resources from the poor countries to the rich ones. He agreed with the previous speaker that corruption was a serious problem that needed to be addressed. It was a product of globalization and occurred at all levels of society, as witnessed by the vast sums transferred out of the Russian Federation to overseas tax havens after the collapse of the Soviet Union.

8. Mr. VERZAT (International Movement ATD Fourth World) said that, while it was understandable that the Sub-Commission experts should be trying to produce an effective legal instrument to help combat poverty, they needed to expand the definition of poverty. Human rights were indivisible and all human rights were affected by poverty; thus, without enjoyment of such essential rights as those to drinking water, food, housing or health care, the poor had no chance of enjoying the right to education. However, experience had shown that, when families living in poverty in any part of the world were ignored and denied any help at all, even those essential rights were compromised.

9. Ms. PONCINI (International Federation of University Women) said that the feminization of poverty was a crucial problem and a gender perspective should therefore be included in the programme of work.

10. Mr. BENGOA, Coordinator of the ad hoc working group, said that he shared the concerns expressed by the speakers, although it was not always easy to determine how precisely to incorporate those concerns effectively into the work of the working group. He agreed with Mr. Decaux's suggestions that the study should be extended to cover developed countries and the countries of Eastern Europe and that all geographic regions should be represented in the discussions. With regard to Mr. Sorabjee's comment on the use of the term "modern poverty", he stressed that the aim was to analyse contemporary forms of poverty in order to determine how wealth and poverty were created simultaneously in an age of globalization that produced not only opportunities but also many victims. He accepted that the questions of corruption and gender had been overlooked and agreed that they should be taken into account in the future.

11. Mr. YOKOTA, Vice-Chairperson, took the Chair.

12. Mr. PINHEIRO, introducing his working paper on the return of refugees' or displaced persons' property (E/CN.4/Sub.2/2002/17), said that housing and property restitution was a very important topic, as it was increasingly recognized that, in the case of many refugees and displaced persons, the dispossession of their homes was at the root of their displacement. Restitution was seen as an increasingly important way to protect their human rights, restore the rule of law and prevent future conflict. The circumstances in which people lost their homes

often involved protracted civil conflict, ethnic cleansing or discriminatory confiscation, and restitution was essential to combat the violations that had led to their displacement in the first place.

13. One of the key points made in his working paper was that the right to return encompassed returning not merely to one's country but also to one's home. In reaffirming that right, the General Assembly and other United Nations bodies had also recognized that States were under an obligation to facilitate the return of refugees and displaced persons. As housing and property restitution had come to be recognized as an essential component of the right to return to one's home, it could be viewed as a free-standing, autonomous right in and of itself.

14. Unfortunately, housing and property restitution was often not a reality for millions of people throughout the world. The troubling gap between existing standards and the facts on the ground needed to be studied so that effective policies could be formulated to ensure that the right to return was adequately implemented. Among the impediments to housing and property restitution were the absence of effective and accessible judicial remedies and secondary occupation. Removing secondary occupiers had proven very difficult, partly because adequate measures had to be taken to ensure that they were protected against homelessness or unreasonable relocation. The response to secondary occupation must be based on human rights and other legal principles that clearly recognized the pre-eminence of the returnee's right to housing and property restitution, and yet it was unclear what precisely that response should be. A thorough analysis of existing and potential policies to address secondary occupation was therefore needed.

15. Another impediment, and one which also jeopardized stability in post-conflict situations, was the failure to rectify discriminatory, arbitrary or otherwise unjust application of the law in the countries of return. The section of his working paper devoted to those and other impediments perhaps raised more questions than it answered, but he hoped to be able to address them in a more comprehensive study which should be undertaken on housing and property restitution in the context of the return of refugees and other displaced persons.

16. Mr. GUISSÉ said that problems arose, as Mr. Pinheiro had rightly pointed out in his paper, when returnees found their homes occupied by someone else. Those problems touched on the right to restitution, compensation and rehabilitation for victims of human rights violations. With regard to restitution, which was discussed in the working paper, the question arose as to what exactly was to be returned: if it was not to be simply the land or property in whatever condition the returnee happened to find it but the land or property in a fit state to be occupied by a human being, then clearly the questions of rehabilitation and responsibility for such rehabilitation were raised.

17. Similarly, the responsibility of the State, or of a citizen of the State, for the expulsion of the original inhabitants would also need to be determined and, at that point, the responsibility of the international community would need to be considered also. He wondered whether the return of refugees' or displaced persons' property was to be seen as the result of a juncture of responsibilities allowing adequate and fair compensation to be provided or simply as a gesture of

solidarity to help individuals recover their property. Consequently, the question of the scope of responsibility in such cases needed to be addressed and, as more and more people were displaced or forced to flee, it was a question of increasing importance.

18. Mr. SORABJEE said that the right to return voluntarily to one's home should not be an illusory or meaningless right, as was the case if a person returned to find his or her property destroyed or illegally occupied. The key issues to return were therefore dignity and safety. Safety was very important as, when people returned, their very presence was often resented and they became the victims of violent attacks because those occupying their property were not anxious to leave. It was therefore necessary to make a distinction between current occupiers who were homeless and needed protection and current occupiers who were guilty of committing crimes against the persons who had since returned. Secondary occupation was often illegal occupation and the new occupants did not deserve any form of protection, as Mr. Pinheiro had suggested.

19. Mr. EIDE said that there was one point which was not sufficiently covered in Mr. Pinheiro's working paper (E/CN.4/Sub.2/2002/17), namely, the fact that houses were often deliberately destroyed in cases of ethnic cleansing, as had occurred in Krajina and in Palestine. That issue needed to be addressed.

20. Mr. LOUFTY (Observer for Egypt) said that he was particularly interested in paragraph 25 of Mr. Pinheiro's working paper regarding the return of Palestinians and compensation. He asked Mr Pinheiro to clarify how that issue should be tackled.

21. Mr. PINHEIRO, having thanked his colleagues for their responses to his working paper, said he noted the importance of Mr. Guissé's comments on placing the issue in the overall international debate on compensation. He also agreed that the responsibility of the State was quite clear and that the international community should participate in the debate on the issue. He appreciated Mr. Sorabjee's comment on the "illusory right" of return and was aware that simply promoting people's return to their homelands was not enough. He agreed that, if property had been taken over illegally by secondary occupiers, they should not be compensated for having committed a crime. The distinction between illegal and secondary occupation due to homelessness was not as clear in the working paper as it might be and he promised to clarify it. Mr. Eide's comments would also help in qualifying the question of returning property to its owner. There was, of course, no sense in returning the ruined remains of a house to its owner and that issue needed to be examined.

22. With regard to the question raised by the observer for Egypt, he would have liked to be able to give a specific reply, but his working paper referred solely to United Nations resolutions on the issue of returnees, which did not provide an answer to that question.

23. He hoped that his colleagues' comments would help to establish guidelines and propose solutions, but the international community and United Nations bodies would also have to participate in the debate. It would hardly be possible to define responsibility in bilateral agreements and the international community would have to help find solutions to cases of criminal responsibility resulting from the destruction of property.

24. Ms. PONCINI (International Federation of University Women) speaking also on behalf of the International Federation of Business and Professional Women, Zonta International, the International Council of Jewish Women, the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, the All India Women's Conference, the World Federation of Methodist and Uniting Church Women, the International Baccalaureat Organization, the World Union of Catholic Women's Organizations, the United Towns Agency for North South Cooperation and the International Council of Women and also as President of the NGO Substantive Committee on the Status of Women of the Conference of NGOs in Consultative Relations with the United Nations (CONGO), said that the organizations she represented were satisfied with the integration of a gender perspective into the revised agenda. However, there was still a tendency to identify gender with women and human rights with men, women being seen as victims and men as actors, whereas, in fact, women were both actors/contributors to development and the victims of violations of human rights.

25. Outlining the difference between gender and women's rights, she explained that gender was cross-cutting and referred to the comparative or different roles, responsibilities and opportunities for both men and women in a given society, whereas women's rights were rights based on the specificities of the physical and biological nature of women. In the sphere of economic, social and cultural rights, it was essential that a gender perspective should be transparent and addressed separately from the treatment of specific women's rights at work.

26. Discrimination based on gender was either direct - originating from a sex bias in standards-setting dating from the era when women were perceived as the weaker sex - or indirect - resulting from economic and social terminologies historically based on the division of labour according to a traditional gender reflection of women's and men's role in society. Consequently, women's economic activities remained undervalued, because of the non-recognition of their double burden of unpaid work at home and of income-generating activities, notably in the informal economy.

27. In most societies, women and men did not have an equal voice or equal authority in both the public and private domains. Women's reproductive role was used as a deterrent to women acquiring and exercising autonomy. The rights of women were also obscured in an effort to ensure neutral language and universal application. There was therefore a need to articulate women's experiences of inequality unequivocally, otherwise women would remain invisible and their human rights illusory.

28. Adoption of gender-sensitive legislation and policies was also an important prerequisite for guaranteeing and protecting women's economic, social and cultural rights, in some cases even requiring the introduction of constitutional amendments. The organization's she represented proposed that the Sub-Commission should undertake studies on the issue. They also pointed out that although some representatives of Governments gave a gender perspective, the process was not yet systematic and she therefore requested that a gender perspective should be integrated each time an agenda item was introduced.

29. Ms. MBONU said that the enjoyment of any rights, but especially economic, social and cultural rights, was seriously undermined by corruption, one aspect of which was the fraudulent acquisition of wealth by individuals or groups of individuals who took advantage of their

privileged position in the national polity to enrich themselves. Many corrupt dictators had stolen from their countries and invested the proceeds in developed societies, depriving their countries of funds for development projects which could have improved the lives of their citizens and created an environment where people were able to enjoy their rights, especially economic, social and cultural rights.

30. In many societies, not only bad leadership but also poverty induced corruption and, although it was frowned upon, corruption thrived and became a way of life. Even when they did not embrace corruption as a way of life, many societies failed to establish adequate social structures and legal regimes to prevent or combat it. Corruption undermined the efforts of Governments to meet their obligations to provide for people's basic needs (health care, education, adequate shelter, provision of drinking water, etc.)

31. An indication of the growing concern over corruption was the African Union's drafting of a convention to combat it. In addition, at least one West African Government had enacted a law against corruption which identified not only stealing, defrauding and offering and accepting bribes as forms of corruption, but also nepotism.

32. She therefore invited the Sub-Commission to consider making a detailed study of the phenomenon of corruption in its widest ramifications and consequences. Such a study would have to examine the general and specific manifestations of corruption, identify vulnerable groups and develop guiding principles for respecting human rights, making international complaints and developing sanction systems. She would therefore be submitting a draft resolution requesting a working paper on the issue.

33. Mr. PARY (Indian Movement "Tupaj Amaru"), speaking also on behalf of North South XXI and Young Doctors Without Frontiers Tunisia, said that regulation of the activities of transnational corporations was imperative, in view of their increasing power to reshape the global economy and to influence political and social affairs. None of the economic, social or cultural problems that currently affected the world were entirely separable from the influence of the transnational corporations. They dominated all aspects of the production and distribution of goods and services, accumulated capital, moved and closed factories unexpectedly, speculated on the stock exchange, and thereby brought about financial collapses that threatened world peace and security. They wielded their power through international financial institutions such as the World Bank, the International Monetary Fund (IMF) and the World Trade Organization (WTO).

34. Earlier intergovernmental negotiations with a view to drafting a code of conduct had failed to reach a consensus, especially with regard to the definition of a transnational corporation. Nevertheless, a study carried out by the (defunct) United Nations Centre on Transnational Corporations had produced a definition, according to which transnational companies were identified as legal entities with rights and obligations. As such, they must be seen as responsible for their contribution to the bankruptcy of the global economy.

35. From the very outset of the negotiations on a code of conduct in 1974, the developing countries had argued that the instrument should be a binding one. A set of guidelines without the

force of law would be delusory, since no international criminal court existed with the power to pass judgement on the illegality of corporate activities. The logic of profit would continue to take precedence over all other considerations.

36. Ms. MIVELAZ (World Organization Against Torture), speaking also on behalf of the Lutheran World Federation, said that the human rights implications of trade-related agreements, as well as the policies and programmes of the international financial institutions, had become central to the work of the Sub-Commission. In that regard, she welcomed the report of the High Commissioner for Human Rights on the liberalization of trade in services and human rights (E/CN.4/Sub.2/2002/9). However, despite the increased attention of the international human rights mechanisms, there remained a distinction in the application of the non-discrimination principle between the fields of human rights and trade law. The understanding of non-discrimination in trade law might well prevent States from putting affirmative action into place, to ensure that the poor, the marginalized and the vulnerable had equal access to basic services such as education, safe drinking water and health care. Further action was required to clarify the meaning of non-discrimination in order to prevent the human rights approach to the liberalization of trade in services being regarded as disguised protectionism.

37. Foreign direct investment (FDI) had become one of the main ways of delivering trade in services, particularly in developing countries. Without careful regulation, the privatization of basic services could occur in complete disregard of the enjoyment of human rights. For example, the privatization of the Cochabamba water and sanitation system by the Bolivian Government in 1999 had led to a steep price increase, excluding many sections of the population from access to drinking water. The Government was eventually forced to withdraw the concession, and to employ armed force to quell the popular uprising that had ensued.

38. She urged the Sub-Commission to endorse the recommendations made in the report on the liberalization of trade in services and human rights, and to ensure that it was widely disseminated to all the relevant organs of the WTO. The WTO should be encouraged to take human rights considerations into account during its ongoing assessment of the General Agreement on Trade in Services (GATS).

39. Ms. BELLAMY (International Confederation of Free Trade Unions) said that the report of the High Commissioner on the liberalization of trade in services and human rights was a timely reminder to States of their obligation to ensure that transnational corporations operating in their territory did so with due regard for the enjoyment of human rights. The recent meeting of the World Commission on the Social Dimension of Globalization of the International Labour Organization (ILO) had confirmed that the fundamental rights of workers were often undermined by the impact of economic globalization. For example, the growth of duty-free export zones and textile industries had been achieved largely through the exploitation of women. Referring to examples in Pakistan and Thailand, she said that, without protection of their right to trade-union membership, women were often employed under deplorable conditions, with a permanent threat of redundancy.

40. The concerted efforts of States and international organizations, including the United Nations and the WTO, were required in pursuing a more humane approach to globalization. The review of GATS currently under way in the WTO, with a view to liberalizing

the provision of services throughout the world, could restrict access to essential services such as health and education if human rights were ignored. Her organization had published a guide for trade unions concerning the social responsibility of private companies, in which it described how a code of good conduct, negotiated with trade unions, could help to provide workers with the opportunity to defend their rights. Too often, codes of working practices were used by corporations for public relations purposes, but failed to have a genuine impact owing to the absence of monitoring mechanisms. Firm agreements needed to be made between employers and trade unions allowing such mechanisms to be set up. A total of 18 framework agreements and codes of conduct had already been drawn up between the international trade union movement and transnational corporations.

41. Mr. GUISSÉ said he welcomed the statement by Ms. Mbono concerning the impact of corruption on the enjoyment of human rights. There were two sides involved in every case of corruption, the individual who made the offer and the one who accepted it. Since the two were inseparable, it was usually considered appropriate to punish each party in the same way. Many instances of corruption were related to money as, for instance, when officials accepted bribes to overlook a violation of the law. However, other forms of bribery, such as the promise of undeserved promotion, and also fraud were rife in some countries. He looked forward to considering a working paper on corruption at the next session of the Sub-Commission.

42. Mr. YIMER said that the report of the High Commissioner on the liberalization of trade in services and human rights (E/CN.4/Sub.2/2002/9) reflected an interesting analytical approach. It brought out clearly and concisely the impact on human rights of the pressure on developing countries to liberalize services, and reached some useful conclusions such as the need for ensuring equal access to basic services and the need for increased dialogue on human rights and trade. He endorsed the recommendation that the Sub-Commission should consider requesting a report on "human rights, trade and investment".

43. Ms. ROBERTS (Human Rights Advocates) said that her organization supported the adoption of the human rights principles and responsibilities for transnational corporations and other business enterprises. They would foster development of the rule of human rights law in international investment, trade and labour relationships. However, she expressed three major concerns regarding the scope and implementation of the principles. First, they should be extended to offer specific protection to migrant workers, given that increasing numbers of migrants were often unprotected by national labour legislation, leaving them vulnerable to abuse. Secondly, transnational corporations should be required to disclose the locations of their subcontractors and suppliers, to ensure the effectiveness of enforcement mechanisms. That was especially important, given that supplier location was currently regarded as a trade secret. Lastly, the future efforts of the Sub-Commission and its sessional working group should be focused on developing local, community-based, reporting procedures and a United Nations oversight mechanism.

44. Potential victims of abuse needed to know their rights, and needed to know where to have recourse should their rights be violated. Given that internal procedures within businesses were often insufficient, and that not all domestic authorities had the resources or the political will to enforce human rights law against transnational corporations, the United Nations offered the most viable solution for a monitoring mechanism. It could develop a list of local contacts and

approved independent monitors, facilitate dialogue between businesses and communities, and determine remedial steps for businesses which failed to comply with the principles. She urged the Sub-Commission to consider ways of creating such a mechanism.

45. Mr. Soo Gil PARK said that the High Commissioner's report on liberalization of trade in services and human rights (E/CN.4/Sub.2/2002/9) was an excellent analysis of the state of the negotiations under the WTO General Agreement on Trade in Services (GATS) and their implications for human rights. It had focused somewhat narrowly, however, on the relationship between the negotiations and the right to development and the universal supply of basic services. Coverage of broader aspects of the negotiations would have been desirable.

46. Trade liberalization in general worked as a powerful engine of economic growth, providing increased financial resources that in turn enhanced human welfare and helped the poor, and trade in services was specifically set to lead economic development in the future. Service industries were vital to the infrastructure of any country and their efficiency had a significant impact on the functioning of the overall economy, yet developing countries frequently lacked the capital or the technology to establish such services. Those countries should therefore make liberalization of trade and investment a central strategy to enhance competitiveness in service sectors. Needless to say, developed countries should also improve access to their markets, since trade, not aid, was of greatest use to developing countries. In short, trade liberalization was the key to securing the right to development.

47. With regard to the regulatory authority of Governments, he said he agreed with the High Commissioner's view that interpretations of GATS should not constrain Governments' efforts to promote and protect human rights. In fact, the WTO trade in services regime gave Governments a degree of flexibility to pursue their policy goals. In particular, all members were free to decide which service sectors to select for liberalization, in accordance with their priorities in advancing economic, social and cultural rights; and sectors where services were provided in the exercise of government authority fell outside the scope of GATS. Most countries recognized the key role Governments played in providing basic services, particularly to the poor, and accepted that liberalization on a commercial basis of sectors such as health and education could present serious problems in that regard.

48. Lastly, he agreed with the report's conclusions. Market forces should not be relied upon to resolve problems concerning human welfare; States should have the flexibility to use development tools to enhance the well-being of their populations; and it was essential to improve the discussions among trade, economic, human rights and environmental experts so as to coordinate the positions of their States in the negotiations.

49. Ms. SHARFELDDIN (International Organization for the Elimination of All Forms of Racial Discrimination) said that the arms race, despite serious efforts to limit it in recent decades, continued to engage a third of humanity's efforts, with the result that two thirds of the world's population lived in poverty and thousands of children were starving daily. A shift in those efforts to agriculture and education would undoubtedly put an end to poverty and restore stability among nations. Judging from the agreement reached after the First World War to ban the use of poison gas, it should be possible for the international community to outlaw other forms of offensive weapons, and her organization urged that no effort should be spared in that endeavour.

50. Mr. BERRY (International Commission of Jurists) said that efforts to realize economic, social and cultural rights through a draft optional protocol to the International Covenant on Economic, Social and Cultural Rights had been given further impetus by a round-table conference convened by his organization in November 2001. The discussions had focused on justiciability, the possible effect of an optional protocol on States' priorities, the rights to be covered in any complaints procedure and possible remedies for violations of the Covenant, among other topics. Another meeting, organized in cooperation with the Federal Republic of Germany and the Republic of Chile in April 2002, had investigated the use of indicators, benchmarks and scoping to assist States in implementing economic, social and cultural rights.

51. However, his organization believed, like many States parties to the Covenant, that many of the fundamental issues surrounding the optional protocol would be addressed more efficiently in the context of the drafting process itself rather than through theoretical discussions. It therefore suggested that the Sub-Commission should request the Commission on Human Rights to authorize the preparation of a draft optional protocol. That would represent genuine progress.

52. Mr. JAHANGIR (Himalayan Research and Cultural Foundation) said that economic rights were given undue emphasis in the context of the International Covenant on Economic, Social and Cultural Rights. More attention should be paid to the problem of ideologies of homogeneity, such as religious fundamentalism, if social and cultural rights were not to be undermined.

53. It was also important to address the challenge posed by non-state actors who attempted to prevent the enjoyment of economic, social and cultural rights. The extremism exhibited in Jammu and Kashmir, for example, and in the United States on 11 September 2001, by terrorist networks originating in Afghanistan and supported by Pakistan, disrupted the peace and tranquillity needed if those rights were to be enjoyed, not only at the regional level but across the globe. He called upon the international community to take steps to safeguard economic, social and cultural rights from the onslaught of terrorism.

54. Mr. CARDONA (World Federation of Trade Unions) said that, even as the international community prepared for the World Summit on Sustainable Development, the United Nations Environment Programme (UNEP) had predicted the destruction of 70 per cent of the natural world in the course of the next 30 years unless there was a change in the current emphasis on the market. Such destruction had already been condemned in 1995, at the World Summit for Social Development, along with hunger, which some described as "silent genocide", yet solutions were still awaited. At the same time, acquired labour rights were being rolled back and advocates of the ILO campaign for decent working conditions were being persecuted. All those contradictions were recognized by the United Nations as factors in the widening gap between rich and poor, yet poverty-eradication programmes continued to be undermined by the promotion of poverty-creating policies.

55. The agreements reached at the Social Summit should be fully implemented and the major themes contained in the programmes of action of other such summits should be made the basis for world development in the twenty-first century. With a view to democratizing international economic relations, his organization also urged the effective implementation of the principles of the Declaration and Programme of Action on the Establishment of a New International

Economic Order, adopted by the General Assembly of United Nations in 1974, including equality in international economic relations and compensation for losses caused by the deterioration in the terms of trade and the burden of foreign debt. Lastly, the rich countries should meet their commitment to devote 0.7 per cent of their gross domestic product (GDP) to official development assistance (ODA).

56. Mr. NIIKURA (International Association of Democratic Lawyers) said that the globalization of crime required globalized law enforcement, but not all means were justified in the pursuit of that end. Certain recommendations of the Financial Action Task Force on Money Laundering (FATF) of the Organisation for Economic Co-operation and Development (OECD) were open to question in that regard. In particular, "gatekeeper control" - the requirement that legal and other professionals should inform the authorities of suspicious transactions by their clients - effectively denied individuals the right to counsel by doing away with professional confidentiality. It might also give rise to abuse of police powers, with officers themselves deciding which transactions should be deemed suspicious. The FATF mechanism in general was unconnected with global efforts to combat starvation, illiteracy or economic disaster and he therefore requested the Sub-Commission to recommend that the globalization of law enforcement should be contained within a framework of the wider protection of human rights.

57. Following the recommendation by the Committee on Economic, Social and Cultural Rights in 2001 that Japan should incorporate a "human rights impact assessment" into all phases of State actions, the Japanese Government had drafted a bill on the protection of human rights. Unfortunately, it did not include an effective mechanism to deal with human rights violations. The continuing absence of such a watchdog system made it even more important to introduce an optional protocol to the Covenant, which could stipulate the components of such a "human rights impact assessment" within countries' domestic legislation and provide a link to the individual communications mechanism.

The meeting rose at 6 p.m.